YEARBOOK ON HUMAN RIGHTS FOR 1965

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CONTENTS

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INTRODUCTION

This twentieth volume of the *Yearbook on Human Rights* contains the texts of, or extracts from, new constitutions, constitutional amendments, legislation, general governmental decrees and administrative orders, and reports on important court decisions, adopted in 1965 and relating to human rights. It is composed of three parts.

Part I describes constitutional, legislative and judicial developments in ninety-seven States. Part II reproduces legislative texts adopted in two Trust Territories and in three Non-Self-Governing Territories. Part III contains the texts of, or extracts from, international agreements bearing on human rights.

The year 1965 saw the promulgation of new constitutions in the Dominican Republic, Gambia, Guatemala, Honduras and Romania, extracts from which appear herein. Also reproduced in the present *Yearbook* are extracts from the Constitution of the State of Singapore of 1963 which, as amended by the Constitution (Amendment) Act, 1965 and the Republic of Singapore Independence Act, 1965, has become as from 9 August 1965 the Constitution of the independent Republic of Singapore. The Sudan Transitional Constitution, suspended by Constitutional Order No. 3 of 19 November 1958, and restored in 1964, is also reproduced herein as amended. Other new constitutions included in this volume are those of Basutoland, Bechuanaland[1] and the Cook Islands. Each of the constitutions referred to reflects principles set out in the Universal Declaration on Human Rights and contains provisions concerning human rights.

The Yearbook on Human Rights for 1965 also makes reference to the amendments to the constitutions of Bulgaria, Mauritania, Mexico, Niger and South Africa adopted during 1965, as well as to Ceylon Act No. 14 on the Imposition of Civic Disabilities, the provisions of which, when supplementary to or inconsistent with the Constitution, are to be considered amendments thereto.

The legislative developments presented in this volume relate to personal, civil and political rights, as well as to economic, social and cultural rights.

Laws relating to the right to protection against discrimination were promulgated in the United Kingdom of Great Britain and Northern Ireland: the Race Relations Act, 1965 dealing with discrimination on racial grounds and incitement to racial hatred; the Republic of the Congo: Act No. 32-65 of 12 August 1965, repealing Act No. 44-61 of 28 September 1961 and establishing the general principles of educational organization, article 1 of which provides that every child shall be entitled to education "without distinction as to sex, race, belief, opinion or property"; and El Salvador: the Private Universities Act of 24 March 1965, article 10 of which states that "in no case may private universities refuse admittance to a student for reasons of race, sex, creed or political ideas".

Other developments relating to the right to protection against discrimination include an amendment to the Criminal Code of Argentina, providing for penalties for religious and racial discrimination; an amendment to the Human Rights Code of Ontario, Canada, providing for strengthened guarantees against discrimination in employment; and the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination by the General Assembly of the United Nations on 21 December 1965.

Legislation relating to the right of everyone to take part in the government of his country was adopted in 1965 by the Governments of Afghanistan: Electoral Law of 17 March 1965; Burundi: Legislative Decree No. 001/685 of 29 March 1965, instituting the electoral code of the Kingdom of Burundi for elections to the legislature; Chile: Act No. 16094 of January 1965, prescribing the methods and limitations to electoral publicity; Ghana: Electoral Act, 1965 (Act No. 291); Niger: Act No. 65-035 of 7 September 1965, concerning the election of the President of the Republic and Act No. 65-038 of 9 September 1965, concerning the definition and punishment of certain offences relating to elections; Rwanda: Elections Act, 1965; the United States of America: Voting Rights Act, 1965; and Yugoslavia: Law on the Register of Voters.

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[1] Basutoland and Bechuanaland became the independent States of Lesotho and Botswana on 30 September and 4 October 1966 respectively.

Represented herein also are amendments to existing electoral laws adopted in Australia: the Queensland Elections Acts Amendment Act of 1965, conferring voting rights upon the aboriginal natives of Queensland and upon Torres Strait Islanders; Denmark: the amendment to the Statutes on Election of 1965, making it possible for persons in remote areas to vote in elections for Parliament; and South Africa: Act No. 72 of 1965, amending the Separate Representation of Voters Act of 1951.

Laws relating to the right to freedom of movement and residence were promulgated in Albania: Law concerning the rights of aliens; Australia: the Queensland Aliens Act of 1965; the Central African Republic: Law No. 65.71 of 3 June 1965 dealing, *inter alia,* with the condition of aliens; the Federal Republic of Germany: Aliens Act of 28 April 1965; Iran: Act to increase the penalty for aiding unauthorized persons to cross the frontier; Ireland: Extradition Act of 1965; Mauritania: Act No. 65-046 of 23 February 1965 on final provisions relating to immigration matters; the Netherlands: Act of 13 January 1965 on the legal status of aliens; New Zealand: Extradition Act of 1965; Sierra Leone: the Non-Citizens (Registration, Immigration and Expulsion) Act, 1965; and Yugoslavia: Basic Law on the Registry of Place of Residence and Living of Citizens, Law on Travel Documents for Yugoslav Citizens, Law on Crossing of State Border and Travel in Border Area, and Law on Travel and Stay of Foreign Nationals in Yugoslavia.

The right to a nationality was the subject of several new laws: Act No. 65-17 of 23 June 1965 on the Code of Nationality, of Dahomey; the Act of 1965 on Citizenship, of Malta; the Nationality Act of 1965, of Thailand; and the British Nationality Act, 1965, of the United Kingdom of Great Britain and Northern Ireland. The text of the Kenya Citizenship Ordinance of 1963 has been made available by the Government of Kenya, and extracts thereform appear also in the present volume.

Legislation adopted in 1965 and reproduced in this volume relating to the right to marry and family rights include the Family Code of Albania; the Muslim Marriage and Divorce (Amendment) Act No. 1 of 1965, of Ceylon; the Act of 3 February 1965, amending the Family Allowance Act of 1957, of Liechtenstein; the Order of the Governor of West Pakistan of 18 February 1965 amending the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961, of Pakistan; and the Law on Surname of Yugoslavia. In this connexion, reference may also be made to the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted by the United Nations on 1 November 1965.

Legislation relating to the right to property was adopted in 1965 in Finland: Inheritance Act No. 40 of 5 February 1965, limiting the scope of relatives entitled to inherit but also extending the right to inherit to the spouse of the deceased; and in Ireland: the Succession Act, 1965 consolidating and amending the Law on the devolution, administration, disposition by will and distribution of intestacy of the property of deceased persons.

Legislation on freedom of opinion and expression was adopted in Afghanistan: the Press Law of 17 July 1965; the Federal Republic of Germany: the press laws in six of the Federal Republic Länder; Iran: Regulations concerning press reporters and press photographers of 6 March 1965; Lebanon: Law No. 37 of 24 June 1965, pardoning violations of articles 56-64 of the Press Code of 1962 commited before 6 May 1965; and New Zealand: the News Media Ownership Act 1965, prohibiting the establishment of private broadcasting stations or the publication of newspapers by companies incorporated outside New Zealand.

Also to be found in this volume of the *Yearbook* are the Copyright Act of 16 September 1965 of the Federal Republic of Germany; the Royal Decree of 11 December 1965 introducing provisional regulations on radio and television, of the Netherlands; the Copyrights Act of 1965 of Sierra Leone; and the International Telecommunication Convention, as well as the Recommendation on Unrestricted Transmission of News, adopted by the International Telecommunication Union on 12 November 1965.

Laws bearing on freedom of peaceful assembly and association reproduced in the present volume of the *Yearbook,* were promulgated in Senegal: Act No. 65-40 of 22 May 1965 concerning seditious associations; Sierra Leone: the Public Order Act, 1965; South Africa: Act No. 97 of 1965 to amend the Suppression of Communism Act, 1950; Uganda: the Trade Unions Act, 1965; and Yugoslavia: Basic Law on the Association of Citizens and Basic Law on Public Meetings. Reference may also be made to legislation adopted in Iraq: Law No. 4 on National Security of 31 January 1965, article 4 of which provides that in time of emergency, among other things, freedom of assembly may be curbed; and Mauritania: Amendment to the Constitution of 12 February 1965, on the expression of the popular will "through the democratically organized State Party".

Cameroon's contribution to the present volume refers to the promulgation of Book I of the new Federal Criminal Code, unifying "general" criminal law for the whole of the Federation. Other penal codes, or amendments to existing codes, include the amendment to the Criminal Code of Argentina, dealt with above in connexion with the right to protection against discrimination; the Military Penal Code adopted in France by Act of 8 July 1965; the Criminal Procedure Act, 1965, of Sierra Leone; the amendment to the Criminal

Procedure Act, 1955, of South Africa; the amendments and additions introduced in the Criminal Code of the Ukrainian Soviet Socialist Republic; and the Laws on Amendments and Additions to the Criminal Code, the Law on Criminal Procedure, the Basic Law on Infringements and the Law on Administrative Disputes, of Yugoslavia.

Legislation adopted relating to the treatment of offenders and detainees, included in the present volume, includes that adopted in the Republic of China: Statute of 1 July 1965 governing the release of persons accused of criminal offences on bail or bond or into custody of others; Iran: Act abolishing the penalty of flogging; Laos: Legislative Order No. 237 of 12 August 1965, containing detailed provisions governing the conditions for the detention during preliminary judicial investigation; Sweden: Act of 3 December 1965 changing the regulations on conditional release and Act of 9 April 1965 providing, *inter alia,* to prevent reports on the conduct of an individual from being compiled beyond the extent deemed necessary to meet the requirements of public authorities; the Union of Soviet Socialist Republics: Order No. 7 of 11 October 1965 of the Plenum of the Supreme Court, on the conditional release of convicted persons; and the United Kingdom of Great Britain and Northern Ireland: the Murder (Abolition of Death Penalty) Act, 1965, abolishing the death penalty for those classes of murder for which capital punishment had been retained by the Homicide Act, 1957.

The present volume also includes provisions from Decree No. 90 of the Office of the President of Guinea of 5 April 1965, on the establishment of an Administrative Tribunal and a Jurisdictional Conflict Court; the Muslim Courts (Criminal Jurisdiction) Act, 1965 of Malaysia; Act No. 65.123 of 20 July 1965 on the reorganization of the judicial system, of Mauritania; the amendments and additions introduced by the Ukrainian Soviet Socialist Republic in the Statute concerning the Comrades' Courts; and the Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics on the punishment of persons guilty of crimes against peace and humanity and of war crimes, regardless of their date.

Legislation adopted during 1965 in France and Venezuela, dealing with the status of women, is included in the present *Yearbook.* In France, the Act of 13 July 1965, on the reform in matrimonial régime, enables women to enjoy and administer their own property and the remuneration received for their work. In Venezuela, a decision of the Supreme Court of Justice on 4 March 1965, declared null and void article 970 of the Commercial Code, which had prohibited women from being receivers in bankruptcy proceedings.

The protection of young persons was a matter of concern to many States in 1965. Legislation on this subject was adopted in Algeria: Decree No. 65-215 of August 1965, concerning specialized centres and homes for the protection of children and young persons; Chile: Act No. 1634 of 8 October 1965, conferring the civil status of legitimate child upon adopted children; the Republic of the Congo: Decree No. 65-147 of 25 May 1965, concerning the establishment of the movement called "Action for Rural Renewal"; Cyprus: Administrative direction of 25 May 1965, on the legitimation of children; Ecuador: Supreme Decree No. 83 of 1965, containing the protection of minors; Finland: Act No. 432 of 23 July 1965, on securing the maintenance of children in certain cases; Ghana: The Maintenance of Children Act, 1965 (Act 297); Norway: Act of 9 April 1965 (No. 3), relating to penal measures against young offenders; Panama: Act No. 6 of 22 January 1965, on Chapala Vocational School for the rehabilitation of youthful offenders; Spain: Order of 30 April 1965 on the recognition of the National Youth Council; and Zambia: The Reformatory School Rules, 1965. In connexion with the above, reference may be made also to the judgement of the Supreme Court of Poland, raising the maintenance payments in respect of a child; and to the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, adopted by the General Assembly of the United Nations on 7 December 1965.

Social legislation adopted during 1965 and reproduced in the present volume includes laws promulgated in Algeria, Bulgaria, the Byelorussian Soviet Socialist Republic, Canada, the Central African Republic, Chile, Costa Rica, Gabon, Ghana, Guatemala, Haiti, Hungary, Ireland, Italy, Jamaica, Japan, Lebanon, Liechtenstein, Malaysia, Malta, Mauritania, the Netherlands, Niger, Nigeria, Norway, Poland, Spain, Sweden, Thailand, Tunisia, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Arab Republic, the United States of America and Venezuela.

Various aspects of labour were dealt with during 1965 in laws adopted in Bolivia, Bulgaria, the Byelorussian Soviet Socialist Republic, Canada, Chile, Czechoslovakia, Ghana, Iraq, the Ivory Coast, Jordan, Liechtenstein, Luxembourg, Monaco, Poland, Spain, Thailand, Trinidad and Tobago, Uganda and the Union of Soviet Socialist Republics.

This *Yearbook on Human Rights for 1965* also contains legislation relating to the right to education promulgated in the Byelorussian Soviet Socialist Republic, Cambodia, Chile, the Republic of the Congo, Hungary, Jamaica, Poland, Portugal, Thailand, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and the United States of America.

Judicial decisions relating to human rights, rendered by various courts in Argentina, Australia, Ceylon, the Federal Republic of Germany, Italy, Jamaica, Lebanon, the Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela, are quoted or summarized in the present volume.

The information dealt with in Part II of the present volume relates to a Trust Territory under the administration of Australia (Trust Territory of Nauru), and to Non-Self-Governing Territories under the administration of Australia (Territory of Papua), New Zealand (Cook Islands), and the United Kingdom of Great Britain and Northern Ireland (Basutoland and Bechuanaland).[2]

Part III contains the texts of, or extracts from, the following international instruments: the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples; and the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations on 1 November, 7 December and 21 December 1965 respectively; the International Telecommunication Convention and the Recommendation on Unrestricted Transmission of News, adopted by the International Telecommunication Union on 12 November 1965. There also appears in this Part III an indication on the status of fifty selected multilateral agreements, adopted since 1946, relating to human rights.

The designations employed and the presentation of the material in the *Yearbook* do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of its frontiers.

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[2] See footnote on p. 365.

PART I

STATES

AFGHANISTAN[1]

ELECTORAL LAW OF 17 MARCH 1965

...

Chapter two: Qualifications for Voters and Candidates for membership in the Shura (Parliament)

Article six:

A voter shall meet the following requirements:

(*a*) Must have acquired Afghan nationality at least one year prior to the publication of the voters' list.

(*b*) Must have reached the age of 20 prior to the month of Sumbullah (begins August 23) of the respective election year.

(*c*) Must not have been punished by deprivation of political rights after 9 Mizan, 1343, (A.H.) (October 1, 1964).

(*d*) Must not have been held insane by a court.

Article seven:

Persons elected for membership in the Shura (Parliament) must possess the following qualifications:

(*a*) Have acquired Afghan nationality at least ten years prior to the date of publication of the voters' list.

(*b*) Must not have been punished by a court with deprivation of political rights after 9 Mizan, 1343 (A.H.) (October 1, 1964).

(*c*) Must not have been held insane by a court.

(*d*) Must be able to read and write.

(*e*) Members of the Wolesi Jirga (House of the People) must have reached the age of 25 years and those of the Meshrano Jirga (House of the Elders) the age of 30 prior to month of Sumbullah of the relevant election year.

Article eight:

The Chief Justice and Judges of the Supreme Court shall not participate in the parliamentary elections as voters or candidates for membership in the Shura (Parliament).

Officers and members of the Armed Forces, officials and other personnel of the police and gendarme forces cannot participate in the parliamentary elections as electors or candidates for election while they are in service. This provision does not include the individuals who, in accordance with the Military Conscription Act, served in the military service but have already completed their conscription terms.

Former officers and members of the Armed Forces can participate in the elections, both as electors or candidates for membership in the Shura (Parliament), provided that their relations have been conclusively broken with the Armed Forces prior to the date of the publication of the electors' list—and subject to the prescription made by the law.

The Head and members of the Government who run for membership in the Shura (Parliament), have to resign from their office prior to their declaration of candidacy.

Article nine:

The Chief Justice and the officials who are running for membership in the Shura (Parliament), shall resign from their respective offices prior to their said candidacy, and in accordance with the provisions of the law.

Resignation separates the resignee from his office and the rights therewith. Nevertheless, in case of his election defeat and returning to his office, he is not subject to resignation aftermath or its consequences.

Neither the judges nor the civil servants can run for membership in the Shura in their offices' jurisdiction unless they have resigned from the office six months prior to the beginning of elections. This provision is also inclusive of those judges, high school principles and headmasters who, according to the provisions made by parts (1) and (2) of Article (42) of this Law, function as the chairman of members of Supervisory Committees of the election process.

Article ten:

Whenever the high-school principals and headmasters who, according to Parts (2) and (3) of the first paragraph of Article (42) of this law, have been acting as chairmen or members of the Supervisory Committee of local elections, decide to run for membership in the Shura (Parlia-

[1] An unofficial translation of the Electoral Law and the Press Law furnished by H.E. Abdul Rahman Pashwak, Permanent Representative of Afghanistan to the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

ment), they shall resign from their offices within three days—beginning from the date they were informed.

In case the elected candidate is an administrative official of a commercial organization, his membership of the Shura (Parliament) is conditional on his quitting his occupation prior to the opening of the first session of the Shura (Parliament).

The term "administrative official" also applies to presidents and members of governing bodies of commercial institutions.

If the candidate is the president or one of the members of the governing body of a commercial institution that has more than five hundred employees and workers in the relevant constituency, the candidate has to resign from his office prior to the date of publication of the electors' list.

Article eleven:

Men who have met the qualifications specified in this law, and whose names have been published in the electors' list, can participate in the elections held for the Shura (Parliament) membership, as provided in this law.

Women, having been qualified according to the provisions of this law, can register for voting one month prior to the publication of the electoral list—thereby participating in the election of the Shura (Parliament) members.

Article twelve:

The men and women who are running for the Shura (Parliament) membership have to declare their candidacy in accordance with the provisions made by Chapter five on this law.

...

Chapter four: Voters' List
(Electors' Table)

Article twenty:

...

Article twenty-three:

Any Afghan man who is qualified to vote and his name is missing in the electors' list can refer to the local Committee for election supervision and ask for the entry of his name thereon within one month from the date of its publication.

Any Afghan woman who is legally qualified to vote can ask for the inclusion of her name within the time limit set forth by the earlier paragraph.

The local Committees for the election supervision have been empowered to accept in accordance with the law the requests made as to entry and recording of the claimants' names in the electors' list within the time limit set by the first paragraph of this article, and to record the requestee's name therein.

Article twenty-four:

Any Afghan can ask the local Committee for election supervision for the correction of statements relating to his name, identification, and residence. The Commission shall make the required corrections.

Any Afghan can protest against the inclusion of a person's name in the electoral list who, in the protestor's view, is not qualified for voting privileges.

Article twenty-five:

Any Afghan can protest against the non-inclusion of a person's name in the electors' list who, from viewpoint of the challenger is entitled to vote.

There is a one-month term for tabling protests from the date the electors' list has been published and the local Commission for the election supervision considers these claims.

Article twenty-six:

The local Committee for election supervision is required to issue its decision on the protests and claims within seven days—starting from the day they were offered. The decision, on the basis of the interested person's plea, can be reviewed by the Public Security Branch of the Provincial Court provided it was presented within seven days from the issuance of the Committee's decision.

Should the President of the Provincial Court have participated in making the decision protested, then in pursuance of the rules regulating "judge rejection" the Public Security Branch's session shall be presided over by its senior member.

The Court shall consider the matter within seven days. The decision shall be operative from the time it is issued, and is not subject to appeal. Such judgements have been exempted from any sort of official dues inclusive of its document price.

In case the acceptance of request or protest necessitates modification of the electoral list, the local Committee for supervising elections is obliged to correct and publicize the electoral list within seven days from the date of the final acceptance of the said request or protest.

Article twenty-seven:

Having observed the provisions made by Chapter two of this law, the government officials and employees can vote in the constituencies situated in their workplace. On this occasion, the Supervision Committee has been required to include the applying official or employees in the electoral list and to treat him on equal grounds as that of other electors.

Likewise, the Electoral Supervisory Committee can cast their votes in the constituencies wherein they function.

Chapter five: Election Candidacy, Nomination of Candidates

Article twenty-eight:

Any Afghan who, according to the provisions of this law, is qualified to be and wants to be elected by a certain constituency, has to present a petition to the local Electoral Supervisory Committee.

The said Committee, after having checked the authenticity of the petition vis-à-vis the orders of this law, shall accept the petition and shall issue a receipt to the petitioner within 24 hours—containing the hour and date of its submission. Hereafter, the petition shall be sent to the respective governor or local magistrate for purposes of public notification.

Article twenty-nine:

Any Afghan can challenge the authenticity of a nominee's candidacy through the Provincial Court. This protest ought to be offered to the Court within fifteen days from the date the local Electoral Supervision Committee had accepted the candidate's nomination. And the case shall be judged by the Court *en bank* within fifteen days.

The Court's decision is final.

The measures taken by the Court are free from any dues—including the document's price. In case a state of "judge's rejection" arises, that shall be considered in accordance with the pertinent rules thereto.

Any Afghan can complain before the Court against the local Electoral Supervisory Committee's decision as to the rejection of a candidate's petition for nomination. The complaint shall be considered in pursuance of the procedure outlined in the above paragraph of this law.

Article thirty:

Having obtained the receipt of his accepted petition, the candidate, within the limits of the law, can start campaigning and thereby bring his goals and objectives to public attention.

Chapter six: The Conduct of Election

Article thirty-one:

Election of the members of Wolesi Jirga (House of the People) shall be conducted by a free, universal, secret and direct election, as well as of those members of the Meshrano Jirga (House of the Elders) who shall be elected in accordance with the provision of Part (*b*) of Article (45) of the Constitution.[2]

A Royal Decree pertaining to election affairs shall be issued on the first day of Saur of the election year. This Royal Decree shall describe all of the measures necessary for the conduct of elections with their relevant dates.

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[2] For extracts from the Constitution, see *Yearbook on Human Rights for 1964*, pp. 9-12.

PRESS LAW OF 17 JULY 1965

CHAPTER I

Goals

Article 1. Freedom of thought and expression is immune from any encroachment in accordance with Article 31 of the Constitution of Afghanistan.

In order to implement the said article and to take into consideration the other values of the Constitution, the provisions set forth in this law organize the method of using the right of freedom of the Press for the citizens of Afghanistan.

The goals which this law aims to secure consist of:

1. Preparing a proper ground over which all Afghans may express their thought by means of speech, writing, pictures, or the like and may print and disseminate various matters.

2. Safeguarding public security and order as also the interest and dignity of the State and individuals from harm which they may be subjected to by the misuse of the freedom of the Press.

3. Safeguarding the fundamentals of Islam, constitutional monarchy and the other values enshrined in the Constitution.

4. Assisting the healthy development of a Press in a way so that this organ of the society may become an effective means for dissemination of knowledge, information and culture among the people of Afghanistan as well as truthfully and usefully reflect public opinion to the society.

...

CHAPTER III

General regulations

Article 3. Permission and authorization for the establishment of general printing houses and publications shall only be given to Afghan citizens and the State in accordance with the provisions set forth in this law. Foreign diplomatic agencies, international organizations and their agencies in Afghanistan can undertake the printing and dissemination of matter for the use of their staff provided they acquire the permission of the Ministry of Press and Information.

Article 4. Wherever in this law the Public Security Offices Act is mentioned, it refers to the law for government officials' offences and for offences against public security and interest.

Article 5. During the period when candidates for the Parliament, Provincial Councils, Municipality Councils and other elective seats are permitted to carry on lawful campaigns, the State is bound to furnish them equal opportunity over the radio or television network to publicize their platform. The platform of the candidate should be explicit. It should also be in accordance with the laws and should have as its aim the support of the values embodied in the Constitution.

CHAPTER IV

Press activities

Article 6. The provisions set forth in this chapter do not apply to irregular publications of the State and also to the printing and dissemination of text books and scientific works for schools and universities.

Article 7. Every periodical must have a proprietor and a responsible editor.

Article 8. A proprietor should have the following qualifications:

1. Should have completed his 25th year.

2. Should not be an officer or member of the Armed Forces.

A person wishing to undertake the printing or dissemination of the Press as a proprietor is required by law to acquire prior permission of the Ministry of Press and Information of Afghanistan. Such a person should for this purpose, submit a statement containing the following information to the Press and Information Ministry.

1. Full name and address.
2. Name and other qualifications of the publication for the printing and dissemination of which authorization is sought.
3. Time and place of printing and dissemination of the publication.
4. Name and address of the printing house where the publication is to be printed.
5. Amount and source of capital which is intended to be used for the dissemination of the publication.

Article 9. The Ministry of Press and Information is required to issue its reply within thirty days of the receipt of the statement. If the owner of the statement meets all the qualifications and his statement contains all the conditions set forth in this law, the Ministry of Press and Information is required to issue the permit.

If the statement is rejected and its owner considers the rejection contrary to the regulation set forth by the law, he can bring a case against the State to the appropriate court. In such a case the office of Attorney-General will defend the State in accordance with legal regulations.

If the Ministry of Press and Information does not issue its decision on the statement, either accepting or rejecting it within the one month mentioned in this law, the owner of the statement can refer the matter to the related court. If he proves that thirty days have elapsed since the receipt of his statement in the related office of the Ministry of Press and Information and the Ministry has not issued its decision, the court announces the statement as acceptable and the owner thereof can as authorized proprietor take action in accordance with the provisions of the law.

If the owner of the statement makes changes in the contents of his statement prior to the completion of thirty days stated in this article, another thirty days is again counted from the date of the latest change. If the change causes a change in the status of the publication, the money to be taken by the Ministry of Press and Information as guarantee also must be deposited on the basis of the nature of the publication.

...

Article 16. The proprietor and publisher will have to send one copy each of their publication to the Ministry of Press and Information immediately after it is published; also one copy each to the office of the Attorney-General, and two copies each to two public libraries in Afghanistan upon assignation by the Ministry of Press and Information.

Article 17. The responsible editor is one who is actually responsible for printing a periodical publication. The responsible editor should have the following qualifications:

1. Should have Afghan citizenship.
2. Should have completed the age of 25.
3. Should be a high school graduate or more, or be trained in journalism, or have some authority in the art of journalism.
4. Should not be a member of Parliament.
5. Should not be an employee of the Government unless the publication is owned by the Government.
6. Should not be an officer or member of the Armed Forces unless the publication is owned by the Armed Forces.
7. Should reside in the place where the publication is issued.

Article 18. No one can become the responsible editor of more than one publication at one time. Provided a proprietor meets the requirements of a responsible editor he can also be the responsible editor of his publication. When the responsible editor is temporarily absent from duty, another person should be appointed to carry out his duties. This person must meet all the qualifications mentioned in this law for the responsible editor.

Article 19. The establishment and operation of public radio transmission and telecasting is the exclusive right of the State. The affairs pertaining to these institutions will be regulated taking due consideration of the rules set forth in this law.

Article 20. The establishment of theatre for the purposes of exhibiting films and staging dramas and operation of cinema and the like will be according to provision set forth in this law.

...

Article 21. Periodical and non-periodical publications, films, dramas and the like which are imported from abroad as well as films and theatrical works produced within Afghanistan by foreign citizens or States can only be sold or distributed or exhibited if prior permission pertaining to such sale, distribution or exhibition has been received from the Ministry of Press and Information. The production in Afghanistan of films by foreign nationals or States where the aim is commercial sale and distribution can be undertaken after obtaining the permission of the Ministry of Press and Information.

Article 22. Permission for the establishment of general printing houses and its authorization can only be issued to Afghan nationals and the State according to regulations set forth by law.

"General Printing House" is a place where printing is undertaken with a view to disseminating printed matter.

Article 23. Anyone wishing to establish a printing house is required to submit a statement to the Ministry of Press and Information for the purpose of receiving a permit. ...

Article 24. No printing house may begin operation or continue printing without the prior appointment of a responsible editor. The responsible editor of a printing house must be a person with qualifications mentioned in Article 17 of this law for the responsible editor of a periodical publication. The conditions stated in Section 3 of said Article are excluded from this regulation.

The owner of a printing house may become the responsible editor of his printing house. In this case the owner must meet the requirements set forth for the responsible editor.

Article 25. If a political party or some other organization wishes to establish a printing house, all those conditions must be observed which are set forth for the proprietor.

Article 26. With regard to the statement for the establishment of a printing house, after its presentation, those regulations will be applied which have been formulated for the statement of securing proprietorship of a periodical publication. This rule also applies in the case of transfer of ownership of the printing house.

Article 27. The name of the printing house, the date of issue, the real or pen name of the author or translator and the name of the publisher must appear either at the beginning or end of every printed work. It is also obligatory to mention the name of the printing house and the date of issue at the beginning or end of individually printed advertisements.

Article 28. The orginal copy of a non-periodical publication which is to be printed in the printing house must bear the author's signature and thus identify the author of the work.

CHAPTER VI

Rights

Article 29. The responsible editor is required in the conduct of his duties to observe the State's laws and goals set forth in the first chapter of this law. The fundamental policy of every periodical publication should be to support the values and aims mentioned in the Constitution of Afghanistan.

Article 30. Equal opportunities for both sides in an argument should be provided while publishing criticism in the Press.

The responsible editor is required to observe the right of reply and correction.

The right of reply may be involved when the publication mentions someone's name or refers to a person and such a person wishes to make an explanation about the matter relating to him in the same publication.

The editor of a newspaper or magazine must publish the reply provided it pertains to the matter provoking such reply. The reply must be published within three days (or if it is not a daily paper, in the first issue to appear after the day following receipt of the reply) in the same place and in the same type face as the article that provoked. During elections the reply must be published within 24 hours.

The reply may be equal in length to the article that provoked it, but it can in no way be more than 1,200 words long.

The right of reply should be in accordance with regulations governing the preservation of the dignity and interests of the State and the people. The right of correction will be exercised by people who hold public responsibility such as the Prime Minister, governors, attorneys-general, mayors and other State employees.

The right of correction will be invoked only if the official activities of these people (who have been delegated official powers or have public authority) have been inaccurately reported.

Article 31. The publication of matter implying defamation of the principles of Islam or defamatory to the King of Afghanistan is not allowed.

Article 32. Incitement through the Press to commit actions, the end of which is considered an offence, will also be considered an offence. Such actions may be:

1. Incitement to disobey the country's laws.
2. Incitement to disrupt public security and order.
3. Incitement to seek depravity.

Article 33. Every action which is considered an offence will also be an offence if commited through the Press. Such actions may be:

1. Disclosure of State secrets such as:

(*a*) Secret government or parliamentary proceedings.

(*b*) Secret court proceedings.

(*c*) Military secrets.

(*d*) Secrets pertaining to Afghanistan's international relations.

2. Incitement to seek depravity by means of:

(*a*) Publication of false of distorted news, in spite of the knowledge that the said news is false or distorted, provided such news causes damage to the interest or dignity of the State or individuals.

(*b*) Publication of obscene articles or photos which tend to debase public morals (publication of obscene articles or photos prejudicial to good morals).

(*c*) Publication of comments and views the aim of which is to divert the courts from reaching correct decisions on cases under their security.

(*d*) Publication of comments and views the aim of which is to divert the public prosecutor, police, witnesses or even public opinion from the correct path over a definite case.

3. Defamation of persons and publication of false statements about them.

4. Attack upon the sanctity of the private life of individuals.

Article 34. If the publication of an item causes direct and actual disruption of the country's social health or economic life, or even deceives public opinion, the editor is required to refrain from publishing it. Such action may be:

1. Publication of items with a view to purposely weaken the State's fiscal credit.

2. Publication of false advertisement of medicines in spite of knowledge about them.

Article 35. Publication of matters with a view to weakening the Afghan Army is not allowed.

...

ALBANIA

FAMILY CODE OF THE PEOPLE'S REPUBLIC OF ALBANIA

SUMMARY [1]

The seventh session of the People's Assembly of the People's Republic of Albania approved on 23 June 1965 a Code on the family No. 4020, printed in the *Official Gazette,* No. 7, 1965. It entered into force on 1 January 1966. As stated in the penultimate article (177) of the Code, it supersedes earlier legislation as follows: "Decree No. 601 of 18 May 1948 'On marriage'; Decree No. 602 of 19 May 1948 'On adoption'; Decree No. 603 of 20 May 1948 'On guardianship'; Decree No. 604 of 20 May 1948 'On relations between parents and children', as well as any other disposition which is in contradiction with the dispositions of this Code."

The code is summarized below.

General principles

Article 1

The family is the fundamental basis of our society.

The family is founded on marriage and is guided by the principles of communist morality.

Article 2

Marriage is contracted by the free will of a man and woman, and rests on a strong feeling of love between the spouses and on principles of equality and of mutual assistance and respect.

Article 3

Marriage and the family are protected by the organs of the state.

Article 4

With the object of founding a healthy family and children who will grow into worthy and conscientious citizens of the People's Republic of Albania, parents have the duty to foster the growth and education of their children during their minority.

Article 5

Children born outside wedlock are equal to children born in wedlock.

Children enjoy the special protection of the organs of the state during their minority.

Article 6

The members of families have as their duty to help each other and to contribute, to the extent of their capabilities and possibilities, to the improvement in the material welfare and cultural level of the family.

FIRST PART—MARRIAGE

Chapter I

CONDITIONS FOR CONTRACTING MARRIAGE

Marriage is contracted before the competent state authority, with the agreement of the prospective spouses (article 7), of whom the man must have reached the age of eighteen and the woman sixteen years (article 8). Married persons cannot enter into a new marriage until their previous marriage has been declared invalid or dissolved (article 9), nor by persons suffering from mental disorders or who are incapable of understanding the aims of marriage (article 10).

Article 11 states the degrees of relationship within which marriage cannot be contracted (grandfather and grandchildren, aunt and nephew, first cousins, etc.) but "tribunals, when important cause has been shown, may legalize marriages between first cousins".

Article 12 prohibits marriages between adopted children and their foster parents, or children of the latter.

Article 13 disallows marriage between close relatives by marriage (e.g. father-in-law and daughter-in-law, etc.), as well as marriages between guardians and the persons under their care (article 14).

Article 15 states, in accordance with the conditions laid down by article 11 of this Code, that authorization for marriage is issued by a popular tribunal in the locality where the applicants are domiciled and when they are not domiciled in Albania, by a popular tribunal of the country where the applicant is installed.

Chapter II

FORMS OF MARRIAGE CONTRACT

The competent state authority for the registration of marriage is the People's Council,

[1] Summary based on text provided by the Government of the People's Republic of Albania.

which maintains a register of marriages in the territory in which both or one of the prospective spouses is domiciled. The prior authorization of the People's Council in question is required for marriages contracted in another district (article 16). A member of the People's Council is nominated to participate in the marriage ceremony, assisted by an official of the civil administration who is responsible for verification and registration of the marriage (article 17). The marriage of Albanian citizens abroad can be performed by consular or diplomatic missions (article 18). The official of the civilian administration is obliged to advise the prospective spouses on all the reasons disallowing the contract of marriage; the prospective spouses are obliged to state that they are entering marriage voluntarily and that there are no legal disabilities (article 19). Documents in support of the latter statement, as well as a birth certificate, must be produced (article 20). These documents, as well as the free expression of will, must be verified by the nominated member of the People's Council, who has, however, no authority to legalize marriages in the presence of legal disabilities (article 21). Appeal may be made to the People's Assembly of the district against the decision of the nominated member (article 22). The marriage ceremony itself must take place in the presence of the two prospective spouses, two witnesses having attained their majority, the nominated member of the People's Assembly, and an official of the civil administration (article 23). The marriage will normally be contracted at a place specified by the competent People's Council, but may take place elsewhere for good reasons shown (article 24). "The nominated member of the People's Council, having verified the identity of the prospective spouses on the basis of the documents produced by them, will read articles 42 to 45 of the present Code outlining the rights and obligations of married persons, ask each of the prospective spouses whether he desires to marry the other, and, on receiving their confirmation, declare them married in the name of the law. Immediately afterwards the act of marriage is registered in the register of marriages and signed by the spouses, the witnesses, the nominated member of the People's Council and by the official of the civilian administration" (article 25).

Chapter III

INVALIDITY OF MARRIAGE

"Marriage contracted against the will of the prospective spouses is invalid" (article 26), or between persons who have not attained the age laid down in this Code, but such marriage will not be declared invalid when the person in question has reached the prescribed age, or when the woman has children or is expectant (article 27). Marriages contracted while earlier marriages have not been dissolved are invalid, except when proceedings for the invalidation of an earlier marriage are successful, in which case the second marriage is valid (article 28). Marriage entered into by a person with mental disorder or similar disability is invalid (article 29), as are marriages contracted between persons as specified in articles 11-14 of this Code, except when the tribunal validates marriage between first cousins for important reasons (article 30). Marriage contracted without the intention of the spouses living as husband and wife is invalid (article 31), as are marriages entered into under duress (article 32), or in cases where there has been impersonation of one of the spouses (article 33), all such reasons for the invalidation of marriage being adjudicated by tribunals (article 34). Proceedings for invalidation under articles 26, 27, 28, 29, 30 and 31 of this Code can be initiated by the spouses, by the Public Prosecutor, or any other interested person (article 35). The time limits for initiation proceedings for invalidation of marriage are prescribed in articles 36 and 37. In cases of mental or physical incapacity of the spouse to initiate proceedings, provision may be made for a guardian to do so (article 38). Legatees do not have the right to initiate invalidation of proceedings (article 39). Children born in a marriage which is declared invalid are considered as having been born in wedlock and relations between them and their parents are regulated by the dispositions of this Code, which lays down the relationships between divorced parents and their children (article 40). The invalidity of marriage must be proclaimed at the place where the marriage was contracted (article 41).

Chapter IV

THE RIGHTS AND OBLIGATIONS OF SPOUSES

Spouses have definite mutual rights and obligations including mutual respect and assistance in the upbringing of the family (article 42). The future matrimonial name must be elected at the time of marriage and registered in the register of marriage, which can be the name of either party before marriage, but the children will take the name of their father (article 43). Spouses will take joint decisions concerning relationships arising from marriage (article 44). "Property in possession of one spouse at the time of marriage remains in his or her ownership, but property obtained by the joint effort of the spouses during marriage becomes the joint property of both spouses. Any contrary agreement is invalid" (article 45). Limitations on joint ownership (e.g. of inherited property, objects of strictly personal utilization) are set out in article 46. Each of the spouses has a right, for well-founded reasons, to demand a division of joint property during marriage; such division can also be applied for by the creditors of one of the spouses (article 47). Such division will take place by mutual consent, or when this is not possible, by the tribunal (article 48). Joint property of the spouses is acquired and disposed of by both parties

conjointly (article 49). Debts contracted by one of the spouses prior to marriage, or for personal requirements during marriage, do not bind the other spouse (article 50). "For the joint debts of the spouses, creditors can lay claim to the personal property of each of the spouses in recuperation of their loan only when their joint property is insufficient for liquidation of the loan" (article 51).

Chapter V

DISSOLUTION OF MARRIAGE

"Marriage is dissolved by the death of one of the spouses, by the declaration of death of one of the spouses and by divorce decreed by a tribunal" (article 52).

"Each of the spouses can apply for divorce when, on account of protracted disputes, ill treatment, gross offensiveness, breach of marital fidelity, incurable disability, major penal conviction of one of the spouses, or for any other reason, matrimonial relations are so profoundly disturbed that life in common has become impossible and that the marriage has lost its purpose. In reaching its decision about divorce the tribunal must take into account the interests of children who are minors" (article 54). The tribunal will state, in appropriate circumstances, which of the spouses bears the responsibility for dissolution of marriage (article 55). After divorce the spouses will revert to their former names, but some exceptions will be allowed (article 56). Each of the spouses can apply for the division of joint property on divorce (article 57). Gifts made during marriage from one party to the other are not recoverable (article 58). "In reaching its decision on divorce the tribunal will also determine which parent must make provision for the upbringing and education of the children. When the parents cannot reach agreement on this issue, or when their agreement is not in the interests of the children, the tribunal taking into account the preferences of the children when they are over ten years old may decide either that all children should be in the care of one of the parents or that some should be assigned to the care of the mother and others to the care of the father. In exceptional cases the tribunal may decide that all the children should be confided to a third person or to a state institution. In taking such decisions the tribunal will have regard to the interests of the children (article 59)." The parent to whom the children are not entrusted will have such right of access as is determined by the tribunal in its judgement (article 60). The tribunal will also determine the amount to be contributed for the upbringing and education of the children by each parent (article 61). Marriage is considered to be dissolved as from the day on which the decision regarding divorce takes effect (article 62). The right to inhabitation of the matrimonial home is also decided by the tribunal (article 63). Rights of inheritance as affected by divorce are described in article 64. In cases of inability to initiate proceedings, divorce action can be undertaken by a guardian in agreement with the Council of Guardians (article 65).

SECOND PART—RELATIONS BETWEEN PARENTS AND CHILDREN

Chapter VI

MATERNITY

The maternity of a child is determined by the fact of its birth (article 66). Maternity recorded in the birth certificate can be contested by the woman registered as mother of the child, or by a woman applying to be recognized as mother, or by a child on attaining majority (article 67). When a child is registered in the birth certificate as being of unknown parentage, the mother can recognize the child. Recognition of a child by a mother who is a minor is admissible only when she has reached the age of fourteen (article 68). Acknowledgement of maternity can be contested before the tribunal by a mother applying to be recognized as the mother, by a child on attaining majority, or by the Procurator (article 69). A child registered on a birth certificate as being of unknown parentage can apply to the tribunal for verification of maternity (article 70).

Chapter VII

PATERNITY

A child born in wedlock has as father the husband of its mother. A child born within the 300 days of dissolution of marriage or from the declaration of invalidity of marriage has as father the former husband of its mother. When a child is born during the second marriage of the mother it has as father the husband of its mother during the second marriage [except] when the child is born within 300 days of the dissolution of the first marriage or of the declaration of its invalidity (article 71). "A man who, in accordance with article 71 of this Code, is the father of a child can contest the paternity of the child in question" (article 72). A mother can contest the paternity of her child being attributed to the man who, according to article 71 of this Code, is considered as this child's father (article 73). A child on reaching its majority can contest that its father is the husband of its mother. Proceedings contesting paternity can also be initiated against the legatees of the father. The right to take such proceedings expires after three years from the date on which the child attained its majority (article 74). The father of a child born outside wedlock is the person who recognizes the child as his own (article 75). A father who has attained the age of 18 can recognize a child born out of wedlock as his own by affirmation before an official of the civilian administration, etc. (article 76). Acknowledgement of paternity of a child born outside wedlock cannot be revoked (article 77). A child on attaining its majority has the right to contest that its father is the man who has acknowledged it as his child (article 78). A man seeking recognition as a father of a child born out of wedlock can contest the claim of another man, who has acknowledged the child to be his own, to be its father

(article 79). The paternity of a child born outside wedlock can be determined also by a decision of the tribunal in certain conditions (article 80). Proceedings for the establishment of paternity of a child born outside wedlock can be initiated by the mother of the child, even when she is a minor, or by a guardian (article 81). The rights to initiate proceedings as laid down in articles 72, 73, 74, 80 and 81 of this Code are not transmittable to the legatees of those taking such action (article 82).

Chapter VIII

ADOPTION

"Adoption takes place in the interests of the person adopted. By adoption the same relationships are established between the adopting and adopted persons as exist between parents and children" (article 83). Only minors can be adopted, and only persons at least 18 years older than the person being adopted have the right to adopt (article 84). Article 85 specifies the categories of persons who do not have the right to adopt. Single people do not have the right to adopt more than one person (article 86). Close relatives do not have the right to adoption (article 88). "Adoption requires the consent of the persons adopted, of the parents of the child to be adopted when he or she is a minor, or as the case may be the consent of its guardian. When the child being adopted has attained the age of 10 years his or her consent is required" (article 89). For children of unknown paternity born outside wedlock, the Director of the State Institution of Children must give his consent (article 90). Approval of adoption by the various parties mentioned must be affirmed personally before its tribunal (article 91). The relevant tribunal is that dependent on the Council of Guardians of the place of the domicile of the person adopting (article 92). The decision of the tribunal can be contested by the persons who, under the terms of articles 89 and 90 of this Code, must give their approval for adoption (article 93). Articles 94 and 95 lay down the date of entry into force and form of the decisions taken by the tribunal. Article 96 states that the same relationships will hold between adopted and adopting persons as between members of the same family, but marriage is not admitted, as specified in article 11. The adopted person takes the name of the adopting family (article 97). The adopted or adopting person can apply to the tribunal for the cessation of adoption, or by demonstrating important reasons (article 98). Release from adoption cannot be applied for after the death of the adopted or adopting person (article 99). Adoption is deemed to have come to an end from the date on which the tribunal registers its decision, from the date of death of the adopting or adopted person (article 100). Article 101 specifies the form and distribution of copies of the decision of the tribunal to terminate adoption (article 102).

Chapter IX

THE RIGHTS OF PARENTS

"Parents have the rights and duties of custody for the upbringing and education of their children during their minority and for the safekeeping of their personal and property rights and interests. The rights of parents are exercised jointly" (article 102). The rights of parents are terminated only in the interests of the child during its minority and with the common consent of the two parents. When there is no prior agreement, this decision is taken by the Council of Guardians (article 103). "Minor children live with their parents. Parents who do not live together must reach agreement on the parent with whom the child will live, failing which, by the tribunal" (article 104). Article 105 states the conditions under which the right of custody is attributed to only one parent. Article 106 lays down the rights of parents in the case of divorce or invalidation of marriage. Articles 107 and 108 prescribe the conditions under which children below the age of 14 are represented by their parents. Article 109 deals with the administration of property of minors. "Parents, in order to ensure a satisfactory level of welfare of the family, can utilize the income from their children's property provided they have not attained the age of 14 years, and when they do not have the wherewithal for existence" (article 110). Articles 111 and 112 lay down conditions under which a tribunal can decide, on the application of one parent, what rights should be exercised by the other. The manner in which parents exercise their rights and obligations for upbringing and education, etc., of their children is supervised by the Institution of Guardianship (article 113). The Council of Guardians can apply to the tribunal for the withdrawal of the rights of parents in specified circumstances (article 114), and for the authorization to administer property of the children (article 115). "Parents' rights cease when the child reaches the age of 18 years, or on prior marriage" (article 116).

THIRD PART—
OBLIGATIONS FOR UPKEEP *

Chapter X

THE PERSONS RESPONSIBLE FOR ASSURING UPKEEP

"Obligations for assuring upkeep take the following order of precedence:

(*a*) One spouse towards the other spouse and children towards their parents;

(*b*) Parents towards their children;

(*c*) The younger members of a family towards their elderly relatives who are not parents;

(*d*) The elder members of a family towards their younger relatives, in the absence of their children;

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* Translator's note: literally "feeding".

(*e*) Brothers and sisters towards their younger brothers and sisters.

When the persons obliged to assure upkeep are not in a position to assume this responsibility in whole or in part, their obligations descend in whole or in part to the persons next in the order of precedence outlined above. Parents are not released from their obligations for the upkeep of their children except when they have been deprived of their rights as parents or when such action is pending" (article 117). "Parents are obliged to support their children during a minority when the latter have no other means of subsistence. The obligation to feed other persons arises only when the persons applying for upkeep are incapable of work or have no means of subsistence" (article 118). Step-parents are also obliged to support their step-children during their minority, except when the latter have other persons who are under that obligation (article 119). Article 120 lays down the obligations of divorced persons in respect of upkeep. In exceptional cases the tribunals can, in deciding on the termination of adoption, oblige the adopting person to assure the upkeep of the adopted person until the latter's majority (article 121).

Chapter XI

THE REGULATION OF THE ATTRIBUTION AND CESSATION OF THE RIGHTS TO UPKEEP

Obligations for the assurance of upkeep are determined according to the level of requirements of the person enjoying the right to upkeep and the material condition of those obliged to assure the upkeep (article 122). Articles 123-129 relate to the conditions under which rights and obligations for upkeep may be withdrawn and to disallow the transferability of the right to upkeep.

FOURTH PART—GUARDIANSHIP

Chapter XII

THE AIMS AND ORGANS OF GUARDIANSHIP

"Children during their minority who are not in the custody of their parents are considered to be under guardianship and enjoy the protection of the state. Persons who are incapable of managing their affairs are placed under guardianship. The aim of guardianship is to assure to minors, who are not in the custody of their parents, the necessary conditions for their upbringing, education and general development in such a manner as to allow them to become worthy and conscientious citizens, as well as to protect their rights and interests" (article 130). "The obligations of guardianship are assumed by legal organs of the state administration under the guidance of the Council of Guardianship" (article 131). Articles 132-137 lay down the terms of reference, composition, executive competence and relations with other administrative agencies of the Councils of Guardians.

Chapter XIII

GUARDIANSHIP OVER MINORS

Minors are placed under guardianship when both their parents are dead, or are unknown, or are declared missing, or have been deprived of their rights as parents or of their executive competence (article 138). Articles 139 and 140 prescribe the forms to be observed when a minor is placed under guardianship, and indicate the qualities required of the guardian. Article 141 lays down the disqualifying conditions for guardianship. The obligations of guardianship towards minors assured by a specialized institution for children are governed by the statutes of the Institution of Guardianship (article 142). Articles 143-147 set out the obligations of guardians and regulate their administration of property according to articles 108 and 109 of the Code. Guardians are obliged to submit to the Council of Guardians a report on their discharge of their duties in respect of the health, education, etc., of minors, once a year (article 148). The Council of Guardians can remove a minor from its guardian for neglect or other reasons as outlined in article 149. Guardianship terminates when the minor reaches his or her eighteenth year or on marriage, if earlier (article 151).

Chapter XIV

GUARDIANSHIP OF PERSONS WHOSE EXECUTIVE COMPETENCE IS ABSENT OR LIMITED

"For persons who, by decisions of a tribunal, have had their executive competence removed or limited a guardian must be nominated by the Council of Guardians within one month from notification of the tribunal's decision" (article 153). "Dispositions for the guardianship of minors are also valid for guardianship of persons whose executive competence has been removed or limited, except when this Code stipulates otherwises" (article 154). Articles 155-158 relate to guardianship over persons aged between 14 and 18 years.

Chapter XV

SPECIAL CONDITIONS OF GUARDIANSHIP

"The Council of Guardians will nominate a special guardian in the following circumstances:

(*a*) When the parents of the minor are incapable of exercising their rights as parents;

(*b*) When there is a conflict of interest between the minors and their parents or when a legal action stands between them, and when there is a conflict of interest among the minors themselves;

(*c*) When on account of disability or other reasons the guardian is prevented from fulfilling his task; and

(*d*) When there is a conflict of interest between the guardian and the person under his guardianship" (article 159).

Articles 160 and 161 specify further exceptional conditions in which a guardian may be nominated and those for which the family or state agency may make application. Special guardianship comes to an end when the conditions giving rise to it no longer obtain (article 165).

FIFTH PART—TRANSITIONAL AND FINAL DISPOSITIONS

Marriages contracted before the entry into force of this Code are valid provided that they were contracted in accordance with the dispositions in force at the time of the ceremony (article 167). The dispositions of this Code in respect of divorce also apply to marriages contracted before its entry into force and also for disputes which are being tried before the tribunals (article 168). Cases concerning the invalidation of marriages initiated before the entry into force of this Code are regulated by the dispositions of the earlier Code (article 169). Articles 170-172 state that the present Code is valid for the personal and property relationships between spouses in marriages contracted before its entry into force, for the maternity of children born before its entry into force and for conflicts being tried before the tribunals concerning verification or contestations of paternity.

ALGERIA

DECREE No. 65-46 OF 19 FEBRUARY 1965 SPECIFYING THE CONDITIONS OF ELIGIBILITY FOR VOLUNTARY INSURANCE AND ENTITLEMENT TO BENEFITS THEREUNDER [1]

TITLE I

REGISTRATION

Art. 1. Voluntary insurance may be taken out by:

Persons who, having held compulsory insurance for a period of at least six months, cease to fulfil the conditions for such insurance;

Persons whose social insurance disability pension has been discontinued;

Widows of wage-earners coming under the general scheme.

Art. 2. Voluntary insurance may be taken out by a person who applies therefor to the social welfare fund of the district in which he is habitually resident within the six months following:

The date of publication of the present Decree;

The date on which he has ceased to fulfil the conditions for compulsory insurance;

The date on which his disability pension is discontinued; or

The date on which he ceases to be a beneficiary.

...

TITLE III

BENEFITS

Art. 16. Voluntary insurance may be taken out for:

All risks;

Sickness, maternity, death, disablement;

Sickness, maternity, death;

Disablement; or

Old age.

...

[1] *Journal officiel de la République algérienne*, No. 17, of 26 February 1965.

DECREE No. 65-215 OF 19 AUGUST 1965 CONCERNING SPECIALIZED CENTRES AND HOMES FOR THE PROTECTION OF CHILDREN AND YOUNG PERSONS [2]

Art. 1. With a view to ensuring the protection of children and young persons, the Minister for Youth and Sports shall be responsible for the execution of all measures for the safeguarding and protection of persons under eighteen years of age whose living conditions and conduct are likely to impair their integration into society.

He shall be responsible in particular for the establishment, administration and operation of such services, institutions, centres and bodies as may be required for the execution of decisions taken in the interests of such persons.

Art. 2. To that end, he shall have authority over specialized centres and homes.

...

[2] *Ibid.*, No. 72, of 31 August 1965.

ARGENTINA

NOTE [1]

I. Act No. 16,648, published in the *Boletín oficial* of 18 November 1964, repealed a number of restrictive decrees and legislative decrees.

Article 3 of this Act amended the Criminal Code to cover new criminal offences by including article 231 *bis*, which reads as follows:

"The following shall be liable to imprisonment for from one month to three years:

"1. Any person who participates in permanent or occasional groups which, without being covered by article 210, have as their object to impose their ideas or combat those of others by force or fear or by the mere fact of membership in the group;

"2. Any person who participates in organizations or conducts propaganda based on ideas or theories of the superiority of one race or one group of persons of a particular religion, ethnic origin or colour, which are designed to justify or promote religious or racial discrimination in any form;

"3. Any person who incites others to violence, by incitation alone, or commits acts of violence, either individually or as a member of an organization, against any race or group of persons of another religion, ethnic origin or colour."

Thus, provision has been made for penalties for religious and racial discrimination. It must be pointed out in this connexion that there are no religious or racial problems in the Republic of Argentina and the purpose of the Act is to prevent their appearance.

II. As to important judicial decisions, quoted below is an extract from a decision on the remedy of *amparo* as a protection of the freedom to work:

"The application for *amparo* in the suit brought by a newspaper vendor against the trade union concerned, seeking to quash the trade union's decision that no more newspapers or periodicals should be sold to him, a decision which was communicated to all the firms distributing the above, shall be allowed, because these instructions are an arbitrary violation of a right enshrined in the Constitution of Argentina and because, if the application for *amparo* were rejected, the plaintiff might suffer serious loss; this is done without prejudice to any rights which the trade union may invoke or to any legal proceedings which it may bring in the competent court." (*Jurisprudencia Argentina*, 1965, II, p. 498.)

In another case, the following decision was taken:

"That the application for *amparo* shall be allowed against actions of private educational institutions which violate the exercise of the right to learn (in this case, by the suspension of a student *sine die*)." (*La Ley*, 2 April 1965, p. 1.)

This decision is cited because it is unique, this being the first case in which an application for *amparo* has been allowed in a violation of the right to learn.

[1] Note furnished by the Government of Argentina.

AUSTRALIA

NOTE [1]

HUMAN RIGHTS IN AUSTRALIA IN 1965

I. Legislation

(A) The Principle of Equal Treatment

(Universal Declaration, Articles 2, 6 and 7)

The Queensland Parliament passed the Aliens Act of 1965 (No. 19 of 1965). This Act provides that aliens may hold and deal with property and interests in property as if they were Australian citizens. The Act repealed a number of Acts containing provisions that discriminated against aliens and amended a number of other Acts to remove provisions having that effect.

The Queensland Parliament also passed the Aborigines' and Torres Strait Islanders' Affairs Act of 1965 (No. 27 of 1965). This Act is designed to confer upon aboriginal natives resident in Queensland and Torres Strait Islanders as nearly as possible the same legal status as other Australians. Certain provisions are included in the Act, however, to provide protection and assistance to these persons, where it is needed.

The Legislative Council of the Northern Territory passed the Licensing Ordinance 1964 (No. 35 of 1964). This Ordinance repeals the provisions of the principal Ordinance which prohibited the supplying of liquor to aborigines and the drinking of liquor by aborigines. Whilst some restrictions on drinking in aboriginal reserves and on land held on pastoral leases are retained, the Ordinance represents a substantial step towards giving aborigines equal rights in obtaining and consuming alcoholic liquor. The Legislative Council also passed the Wards' Employment Ordinance 1965 (No. 2 of 1966). This had the effect of bringing aboriginal workers within the scope of many industrial awards and thus according them equal treatment with all Australians.

(B) The Suffrage

(Universal Declaration, Article 21)

The Queensland Parliament passed the Elections Acts Amendment Act of 1965 (No. 59 of 1965). The Act confers voting rights upon the aboriginal natives of Queensland and upon Torres Strait Islanders. (The right to vote in Commonwealth elections has already been conferred upon these persons, as well as upon all other aborigines, by the Federal Parliament and all other States have now conferred this right to vote upon aboriginal natives in the respective State elections.) The Queensland Act provides for the voluntary enrolment of the persons concerned: there is to be no separate roll for any racial group.

(C) Conditions of Work

(Universal Declaration, Articles 23 and 25)

The Victorian Parliament passed the Workers Compensation (Amendment) Act 1965 (No. 7292). This Act (1) increased the rates of workers' compensation payable for injury or death; (2) removed the limit of remuneration in the definition of "worker" so that all workers within the meaning of the Act will be entitled to the benefits of the Act; (3) enabled the Workers Compensation Board to make an award to a worker without reference to a table of compensation and having regard to the nature of his injury; and (4) provided for the payment of compensation to public servants and employees of statutory authorities employed and injured outside Victoria.

(D) Social Services

(Universal Declaration, Article 25)

The Commonwealth Parliament passed the Social Services Act 1965 (No. 57 of 1965). This Act increased the rates of payments and extended the scope of social welfare benefits.

The New South Wales Parliament passed the Adoption of Children Act 1965 (No. 23 of 1965) and in the Australian Capital Territory the Adoption of Children Ordinance 1965 (No. 15 of 1965) was made. These laws, like those upon the same subject that were referred to in the Australian contribution to the *Yearbook* for 1964, contained provisions to safeguard both the welfare of children who are the subject of adoption and the rights of persons who adopt them. In addition, they establish a legal foundation on which Australia-wide recognition of orders made in the various States and Territories can be based.

[1] Note furnished by Mr. J. O. Clark, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights.*

The States of Australia began to pass uniform Acts relating to the maintenance of deserted wives and children. This legislation is designed to facilitate the obtaining of maintenance both when orders have been made under the Matrimonial Causes Act 1959 of the Commonwealth and when no proceedings have been taken under that Act. The legislation consolidates, amends and introduces new concepts into the law relating to the making of orders for the maintenance of wives, husbands, children and illegitimate children and for the payment of confinement, medical and like expenses and funeral expenses and for the enforcement of inter-State and overseas orders of this kind. The Acts passed were: in New South Wales, the Maintenance Act 1964 (No. 74 of 1964): in Victoria, the Maintenance Act 1965 (No. 7289): in Queensland the Maintenance Act of 1965 (No. 44 of 1965): in Western Australia, the Married Persons and Children (Summary Relief) Act 1965 (No. 109 of 1965): in South Australia, the Maintenance Act Amendment Act 1965 (No. 54 of 1965).

The Legislative Council of the Northern Territory passed the Child Welfare Ordinance 1965 (No. 27 of 1965). This Ordinance made new provision for the conduct of child-minding centres, reduced the age limit of a State child from eighteen to seventeen years, provides for children's courts to be closed courts and prescribed that the power of a children's court to commit children to prison be restricted to children over the age of fourteen years.

(E) Right to Education

(Universal Declaration, Article 26)

The Commonwealth Parliament passed the Acts that are named and described below. The Universities (Financial Assistance) Act 1964 (No. 129 of 1964) and the States Grants (Universities) Act 1964 (No. 130 of 1964) granted financial assistance to the States to enable them to pay higher university salaries.

The States Grants (Science Laboratories) Act 1964 (No. 39 of 1965) continued, for three financial years, grants to secondary schools, without discrimination, in all six States and the two mainland Territories, for the construction and equipment of science laboratories. The grants will amount to $10 million for each of the three years.

The Universities (Financial Assistance) Act 1965 (No. 40 of 1965) made more Commonwealth funds available for State universities for the years 1964, 1965, and 1966.

The States Grants (Technical Training) Act 1965 (No. 41 of 1965) granted financial assistance, at the rate of $10 million for each of three years, to the States for buildings and equipment for use in technical training and in State schools.

The Universities (Financial Assistance) Act (No. 2) 1965 (No. 101 of 1965) provided additional funds for State universities during the 1964-1966 triennium. It provides for grants for capital works at medical teaching hospitals of $3,111,700 and further grants of $369,800 for the recurrent costs of those hospitals which are directly attributable to the instruction of undergraduate students in teaching hospitals. This sum of $3,481,500 will raise the total amount of Commonwealth financial assistance to State universities during the triennium to approximately $146 million. In addition, the Commonwealth will find $48 million for the Australian National University.

The States Grants (Advanced Education) Act 1965 (No. 102 of 1965) authorized the first Commonwealth grants to the new colleges of advanced education. Grants totalling $4.8 million will be paid by the Commonwealth to various States for expenditure on capital works at specified colleges over an eighteen month period, the Commonwealth grants being subject to matching contributions from the State Governments.

Victoria passed the La Trobe University Act 1964 (No. 1789). The Act establishes a new university, the third in Victoria.

The Legislative Council of the Northern Territory passed the Education Ordinance 1965 (No. 13 of 1965) the principal effect of which was to raise the school leaving age from fourteen years to fifteen years.

II. Court Decisions

(A) Right to Liberty

(Universal Declaration, Article 3)

False imprisonment—Conviction of plaintiff for income-tax offence—Clerk in office of Clerk of Petty Sessions wrongly indorsing imprisonment on order—Warrant of commitment issued by clerk as justice—Liability of clerk—Liability of constable—Liability of Controller of Prisons and Attorney-General. The plaintiff in his absence was convicted before a police magistrate of failing to lodge an income-tax return contrary to the *Income Tax and Social Services Contribution Assessment Act* 1936-1963 (Commonwealth), s. 223, fined £3 with costs and ordered to lodge a return within thirty days, as appeared from the court register and a certificate of conviction, but a clerk in the office of the Clerk of Petty Sessions acting as clerk in court indorsed the order on the complaint adding imprisonment for 14 days in default. The plaintiff having an excuse for his failure came to an arrangement with the Department which wrote to the Clerk to stay proceedings, which letter his clerks mislaid. Later the same clerk who had been clerk in court being and as a justice issued a warrant of commitment of the plaintiff directed to all police officers and "to the Gaoler of the Gaol at in the said State", reciting the plaintiff's conviction "for that He failed to lodge a Return for year ending 30/6/62", and the judgment of the penalty and costs, adding "that if the said several sums should not be paid (forthwith) the said [plaintiff] should be imprisoned in the said gaol (and there kept

to hard labour) for the term of 14 days unless the said several sums and the costs and charges for conveying the said [plaintiff] to the said gaol should be sooner paid", and commanding the said police officers to take the plaintiff and convey him "to the said gaol, and deliver him to the gaoler thereof", and "the said gaoler" "there to imprison him and keep him to hard labour for the term of 14 days, unless the said several sums and the costs and charges of conveying him to the said gaol, amounting to the further sum of are sooner paid." On this warrant a constable took the plaintiff and delivered him to the Controller of Prisons and Governor of the Gaol at Risdon who there imprisoned and kept him to hard labour for 14 days. The plaintiff then brought an action for false imprisonment against the clerk concerned, the constable, the Controller of Prisons, and the Attorney-General. The defendants relied *inter alia* on s. 240 of the *Income Tax and Social Services Contribution Assessment Act,* the clerk on ss. 126 and 133 of the *Justices Act* 1959 (Tas.), and the constable and the Controller on s. 6 of the *Constables Protection Act* 1750 (Imp.). *Held,* that (a) the clerk's indorsement of the complaint had no effect because (i) he had no right to supplement the express order; (ii) it did not agree with the court register; and (iii) to choose between the three methods of execution under s. 247 of the *Income Tax and Social Services Contribution Assessment Act* is a judicial act; (b) the warrant was bad because—(i) the clerk could not as a justice issue the warrant under the *Justices Act* 1959, s. 78 not having been complied with, and s. 85 being inapplicable; (ii) if its issue were a judicial act it would be in Federal jurisdiction and outside the clerk's powers as an honorary justice; (iii) it named no gaol; (iv) even if Risdon were the natural gaol to use, there was no evidence that the Controller was the "gaoler" thereof; (v) no offence of a criminal nature was recited or indicated sufficiently to be helped by s. 30 of the *Justices Act* 1959 (Tas.); (vi) there was no justification for mentioning hard labour; (vii) it included costs and charges not to be enforced by imprisonment under ss. 248 and 250 of the *Income Tax and Social Services Contribution Assessment Act,* and a warrant fee forbidden by the *Justices Rules* 1961; and (viii) it ordered committal for fourteen days and not "until the penalty is paid" as required by s. 247 of that Act; (c) the warrant was too defective to be saved by s. 240 of that Act, because even if it had been properly drawn it was a nullity made without jurisdiction; (d) it was too defective for the Controller to rely on, being obviously irregular and not addressed to him, but was sufficient on its face for the constable; (e) since there was no jurisdiction to issue the warrant, no immunity could arise at common law for them that acted on it; (f) s. 126 of the *Justices Act* 1959 can only aid a justice acting "with respect to a matter within his jurisdiction"; (g) s. 127 of that Act applies here and is subject to s. 133; (h) there is no proof of what is required by par. (b) of s. 133, because, although he was imprisoned for no longer than he might at most have been, it was with hard labour: *Smith* v. *O'Brien* (1862), 1 W. & W. 386, followed; (i) even if the warrant might have justified the Controller had the justice erred on a question of fact, it was issued without any regard for jurisdiction; (j) s. 6 of the *Constables Protection Act* 1750 extends to gaolers, but even assuming it to extend to the Controller he cannot claim to act in strict obedience to a warrant not addressed to him, nor can the constable so claim when he assumed the blank to mean Risdon; and (k) the Attorney-General is liable for the acts of the Controller. GERARD *v.* HOPE (1965). Not yet reported. *Supreme Court of Tasmania.*

(B) RIGHT TO MARRY

(Universal Declaration, Article 16)

Marriage—Minors—Consent by magistrate or court after refusal by parent—Reasonableness of refusal—Rehearing by judge after decision of magistrate. A girl aged eighteen years made an application under s. 16 of the *Marriage Act* 1961 (Commonwealth) to a stipendiary magistrate for consent to marry her fiancé, aged twenty-four years, notwithstanding her parents' refusal to consent to the marriage. The magistrate refused the application, and the girl requested under s. 17 that the application be reheard by a judge of the Supreme Court. The girl's parents based their refusal to consent to the marriage on two grounds: (1) the applicant's youth and immaturity, and (2) her financial security. It was suggested on behalf of the applicant that the real reason for the refusal was the religion of her fiancé and the fact that she had adopted his religion. *Held,* that where a judge, pursuant to s. 17 of the *Marriage Act* 1961, holds an inquiry into an application for consent to marry by a minor, the rehearing is to be regarded as an inquiry *de novo* into the relevant facts and circumstances, and the judge is to arrive at his own conclusions and form his own opinion thereon upon the evidence before him without being in any way bound by what the magistrate has done or by his reasons for arriving at his decision. *Held, further,* that as the Act confers on parents the right to refuse consent as an incident of the relationship of parent and child; a judge or magistrate should not lightly overrule the decision come to by the parents and should only do so if he is clearly of the opinion that the refusal to consent is unreasonable. *Held, further,* that a refusal of consent based entirely upon a reason personal to the parents and in no way connected with the parties to the proposed marriage and the desirability of their union would *prima facie* be unreasonable. *Held, further,* that the parents of the applicant were sincere in their opposition to the marriage on grounds which were not based entirely on a reason personal to them but which were connected with the parties to the proposed marriage and the desirability of their union. The application was refused. *Re* AN APPLICATION UNDER s. 17 OF MARRIAGE ACT 1961 (Commonwealth) [1964] *Queensland Reports* 399.

Marriage—Minor—Parents' refusal of consent —Rehearing by judge after decision of magistrate. Application was made to a special magistrate by a minor, under s. 16 of the *Marriage Act* 1961 (Commonwealth), for the consent of the special magistrate to the marriage of the minor. The minor's parents had refused to consent to the marriage. The special magistrate gave his consent to the marriage, and the parents, under s. 17 of the Act, requested that the application be reheard by a Judge of the Supreme Court. *Held,* that the rehearing was by way of retrial upon the evidence given before the special magistrate, and that it was competent for the judge of the Supreme Court, upon the rehearing, to receive fresh evidence, which had not been placed before the special magistrate. The decision of the magistrate to give his consent to the marriage was confirmed. Re V. [1964] *South Australian State Reports* 189.

Marriage—Minors—Refusal of consent by one parent—Rehearing by judge after decision of magistrate—Principles on which Court acts— Revocation of consent by other parent after decision of magistrate. To the marriage of a minor one parent gave consent and the other refused. The minor applied to a magistrate who refused. The minor requested that the application be reheard by a judge. Before the rehearing the consenting parent revoked his consent. *Held,* that—(a) the judge makes a fresh inquiry into the matter; (b) he considers the position as it then is; (c) the parent who, since he was then consenting, was not a party to the original application is entitled to be heard; and (d) only reasonable objections to the marriage are to be considered and to be reasonable they must be relevant to the proposed parties thereto and not merely to the objector. The judge gave his consent to the marriage. *Re* HAMPTON (1965) *Supreme Court of Tasmania.* Not yet reported.

Marriage of young persons—Authorization by court—Male under eighteen—Exceptional and unusual circumstances—Pregnancy of proposed wife. The applicant, aged seventeen and a half years, wished to marry a girl who was pregnant by him. On application under the *Marriage Act* 1961 (Commonwealth), s. 12, to a judge of the Supreme Court for an order authorizing him to marry, evidence was adduced, *inter alia,* as to the desire of the parties to set up house and establish a home as soon as possible, as to the availability of living accommodation for them, as to their mental maturity and responsibleness, as to the financial position and employment of the applicant, and as to his ability and the opportunities of advancement open to him. The parents of both parties supported the application. *Held,* that the particular circumstances of the case were such as to constitute them circumstances of such exceptional and unusual character as to justify the making of an order; the court's discretion should be exercised in favour of the applicant, and the order sought should be made. *Re* H. (AN INFANT) (1964) [1964-5] *New South Wales Reports* 2004.

AUSTRIA

NOTE [1]

(1) In the field of jurisdiction no significant events occurred as to the development of human rights in Austria during 1965. The Austrian Supreme Court, in particular the Constitutional Court, followed in regard to the guaranteed fundamental and freedom rights the principles developed by long-term practice.

The only individual case of interest in this context concerns a judgement by the Constitutional Court, in which it was stated that the European Convention of Human Rights is to be considered a constitutional order binding the legislator in Austria.

(2) No particular measures have been taken by the legislation in the field of human rights in 1965. The Council for problems arising in connection with fundamental and freedom rights, the establishment of which was reported in the Austrian contribution to the United Nations *Yearbook on Human Rights for 1964*,[2] held several consultations in 1965. This Council has demonstrated itself to be a most useful organ and has clarified the basis for a new codification of fundamental and freedom rights to such an extent that during 1966 consultations and negotiations on individual human rights can be taken up.

[1] Note furnished by the Government of Austria.

[2] See p. 19.

BOLIVIA

1. Legislative Decree No. 07032 of 24 January 1965 [1] provides that general elections for the President and Vice-President of the Republic, and for senators and deputies, are to be held on the last Sunday of September 1965.

2. Legislative Decree No. 07033 of 24 January 1965 [2] establishes a special commission within the national armed forces to ensure that the land reform is carried out properly.

3. Legislative Decree No. 07034 of 24 January 1965 [3] repeals the Electoral Statute of 9 February 1956 [4] and all the amendments thereto and establishes a Committee to draft new electoral legislation.

4. Legislative Decree No. 07072 of 23 February 1965 [5] provides for the prevention of social disputes between employers and their employees during the pre-election period, in accordance with the truce proclaimed in Legislative Decree No. 7032 of 24 January 1965.

5. Legislative Decree No. 07168 of 17 May 1965 [6] institutes compulsory military service for all Bolivians from eighteen to sixty years of age.

6. Legislative Decree No. 07420 of 8 December 1965 [7] proclaims the tenth day of December of each year as "Human Rights Day".

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[1] *Gaceta Oficial de Bolivia*, No. 228, of 27 January 1965.

[2] *Ibid.*

[3] *Ibid.*

[4] For extracts from the Electoral Statute of 1956, see *Yearbook on Human Rights for 1956*, pp. 24-27.

[5] *Gaceta Oficial de Bolivia*, Nos. 233-234, of 3-10 March 1965.

[6] *Ibid.*, No. 245, of 26 May 1965.

[7] *Ibid.*, No. 273, of 8 December 1965.

BRAZIL

ACT No. 4.771 ISSUING A NEW FOREST CODE [1]

1. The forests of Brazil, and all other forms of vegetation that are recognized as being beneficial to the land which they cover, are property of value to all the inhabitants of the country; property rights over them shall accordingly be exercised with the limitations laid down in legislation in general and in this Act in particular.

Proviso. Acts and omissions contrary to the provisions of this Code in the use and working of forests shall be considered use that is to the detriment of property (Article 302, XI, b, of the Code of Civil Procedure).

2. This Act hereby provides permanent protection for forests and other types of natural vegetation. ...

...

5. The Public Authorities shall create:

(*a*) National, State and Municipal Parks and Biological Reserves to protect exceptional natural features, harmonizing the overall protection of flora, fauna, and natural beauty with use for educational, recreational and scientific purposes;

(*b*) National, State and Municipal Forests for economic, technical and social purposes, and shall set up reserves even in areas that are not covered by forest but are intended for use as forest.

Proviso. The exploitation of natural resources in any manner whatever shall be prohibited in National, State and Municipal Parks.

6. The owners of forests not protected under this Act may make them subject to permanent protection after the forest authorities have ensured that this is in the public interest. Such protection shall be for the period of time fixed by the forest authorities and shall be shown in the margin against the entry in the Public Record.

...

8. The distribution of plots for agriculture under land settlement and land reform plans shall not include land in the permanently protected forest areas referred to in this Act nor the forests required for supplies of timber and other forest products either locally or nationally.

9. Areas of privately owned forest that are physically part of other forest land that is subject to special regulations, shall also come within the scope of the said regulations.

...

18. On privately owned land where afforestation or reafforestation for permanent protection is required, the Federal Public Authorities may carry out such work without expropriating the land concerned, should the owner fail to do it.

(1) If such areas are being used for crops, the owner shall be compensated for the value thereof.

(2) The areas used in this manner by the Federal Public Authorities shall be exempt from taxation.

19. With a view to improving economic yield, owners of mixed forests may convert them into homogeneous forests by making cuttings simultaneously or successively of all the trees to be replaced, provided that before the initiation of the work they sign an undertaking before the competent authority with respect to replacement and the areas for cultivation.

20. Industrial undertakings, which by their very nature consume large quantities of forest raw material, shall be required, within such radius as is considered economic for the working and transport of timber, to maintain an organized service to ensure the planting of new areas on land belonging to them or to third parties, the output from which, in rational working conditions, is equivalent to their consumption needs.

Proviso. Persons failing to comply with the provisions of this Article shall, in addition to the penalties provided for herein, be liable to the payment of a fine equal to ten (10) per cent of the commercial value of the native forest material consumed in excess of the output which it represents.

21. Iron-smelting concerns and transport and other undertakings that use charcoal, timber or other raw materials of vegetable origin shall be required to maintain their own forests for rational exploitation or to form forests for their

[1] *Diário Oficial,* No. 177, of 16 September 1965. Translations of the Act into English and French have been published by the United Nations Food and Agricultural Organization as *Food and Agricultural Legislation* Vol. XV—No. 2, XIII/1.

supply needs either directly or through undertakings in which they participate.

Proviso. The competent authority shall lay down the time limit which each undertaking shall be allowed for compliance with the provisions of this Article, and this shall vary from five to ten years.

22. The Brazilian Union shall control directly the application of the provisions of this Code either through the Ministry of Agriculture or in agreement with the States and Municipalities, and it may for this purpose set up whatever services are required.

23. The control and protection of forests by the specialized services shall not prevent the police authorities from taking action on their own initiative.

24. Forest officers shall in the exercise of their duties have the status of public security officials and shall be entitled to carry arms.

25. In the event of the outbreak in rural areas of fires which cannot be extinguished with normal equipment, it shall be the responsibility not only of forest officers but also of all other public authorities to requisition equipment and mobilize the men capable of giving assistance.

. . .

29. Penalties shall apply to offenders irrespective of whether such persons are:

(*a*) direct offenders;

(*b*) tenants, sharecroppers, legal landholders, managers, administrators, directors, prospective purchasers or owners of forest areas, if the offences were committed by agents or subordinates acting in the interests of principals or hierarchical superiors;

(*c*) authorities responsible for omissions or who give encouragement by illegal consent to perpetration of illegal acts.

30. The general rules set forth in the Penal Code and in the Penal Offences Law shall apply to the offences provided for in this Code, unless this Act provides otherwise.

31. Aggravating circumstances, in so far as the punishment is concerned, shall, in addition to those laid down in the Penal Code and the Penal Offences Law, include:

(*a*) committing offences during natural seeding periods or at the time of the formation of the vegetation which has been damaged, during the night, on Sundays or holidays and during periods of drought or flood;

(*b*) committing offences in a permanently protected forest or in such manner as to involve material withdrawn from such forests.

32. Prosecution shall not depend upon complaint, even in the event of damage to private property, whenever the property concerned is forest property or other forms of vegetation, work equipment, and documents or deeds relating to forest protection under this Act.

33. The competent authorities for initiating, administering and proceeding with police inquiries, for drawing up warrants for the arrest of persons found in *flagrante delicto* and for initiating criminal proceedings for the crimes or offences provided for in this Act and other legislation shall, when such crimes and offences involve forests, other types of vegetation, work equipment, documents and products therefrom be:

(*a*) the authorities listed in the Code of Criminal Procedure;

(*b*) the officials of the Forests Service and of autonomous bodies whose functions include responsibility for such matters, when appointed to carry out control and inspection work.

Proviso. In the event of the initiation of penal action simultaneously by separate authorities for a single act, the judge shall bring the various cases together in the area of jurisdiction which is established as competent.

34. The authorities referred to in subparagraph (*b*) of the foregoing article shall, once the report of an offence has been confirmed by the Office of the Attorney-General (*Ministério Público*), have competence equal to that of the Office of the Attorney-General for acting in an auxiliary capacity to bring the matters referred to in this Act before the normal courts.

35. The authorities shall seize any products or equipment used in committing offences and if such products or equipment are not of the size or type that they can be present during the inquiry, they shall be handed over to the local public depositary, if there is any, and if not, to such person as shall be appointed by the judge for their return in due course to the person who has incurred the damage. If the said products or equipment belong to the person who committed the offence, they shall be sold by public auction.

. . .

42. Two years after the promulgation of this Act, no authority shall permit the use of school reading text books that do not contain texts on forest training previously approved by the Federal Education Council after hearing the competent forest body.

(1) Radio and television stations shall be required to include in their programs texts and material dealing with forest questions as approved by the competent authority; such broadcasts shall amount to a minimum of five (5) minutes per week on the same or different days.

(2) Official maps and charts shall be required to show Public Parks and Forests.

(3) The Union and the States shall promote the creation and development of forest training schools at the various educational levels.

43. A Forest Week is hereby established to be celebrated on the dates fixed by Federal Decree

for the various regions of the country. Forest Week shall also be compulsorily celebrated in public and subsidized schools and institutions through objective programs that give emphasis to the value of forests in relation to their products and the benefits to be derived therefrom and that show the correct way of managing and maintaining forests.

Proviso. During Forest Week arrangements shall be made to hold meetings, lectures, reafforestation days and other ceremonies and celebrations to draw attention to the fact that forests are a renewable natural resource of great economic and social value.

...

BULGARIA

NOTE [1]

I. Legislation directly related to international affairs, international agreements and legal relations with international implications

1. Non-applicability of statutory limitations to crime against humanity

Decree on the non-applicability of statutory limitation to war crimes and crimes against peace and humanity, promulgated by the Presidium of the National Assembly on 22 March 1965 and published in the *Official Gazette,* No. 23, of 23 March 1965. By this Decree Bulgaria aligns itself with those States which have adopted in their legislation and their practice the principle of international law concerning the non-applicability of statutory limitation to persons who have committed war crimes and crimes against peace and humanity.

2. Prevention of double taxation

(*a*) Decree amending article 22 of the Act on duties and local taxes (*Official Gazette,* No. 1, of 5 January 1965), which provides that Bulgarian nationals shall not be required to pay duties on inheritance received abroad; this provision applies also to duties on inheritance received before the promulgation of the Decree.

(*b*) Act amending and supplementing the Act on interest on taxes, dues and other debts to the State, the Income Tax Act, the Act on duties and local taxes, the Property Insurance Act and the Act on raising the birth-rate and encouraging large families (*Official Gazette,* No. 52, of 2 July 1965), which contains amendments, *inter alia,* to the Income Tax Act, to exempt from taxation royalties and other fees paid to Bulgarian nationals in foreign currency by the Copyright Protection Office when they are taxed abroad. Royalties and fees paid by Bulgarian Government offices, enterprises and other organizations to foreign authors are taxed in Bulgaria on the basis of reciprocity with the foreign country concerned.

II. National legislation

1. Political rights

Act amending article 18, paragraph II, of the Constitution of the People's Republic of Bulgaria and Act amending article 25 of the Act on elections to the legislature in the People's Republic of Bulgaria, published in the *Official Gazette* of 10 December 1965, providing that deputies shall be elected at the rate of one deputy per 20,000 inhabitants, instead of one deputy per 25,000, as previously, thus making the National Assembly even more broadly representative than before.

2. Protection of life and health

Of the numerous measures enacted in this sphere, the following deserve special mention:

(*a*) Regulations governing the organization and supervision of protection against X-rays in the People's Republic of Bulgaria, approved by the General Inspector of Health and published in the *Official Gazette,* No. 46, of 11 June 1965.

(*b*) Regulations for protection against radiation, approved by the Ministry of Health and Welfare and by the State Committee for Science and Technical Advancement and published in the *Official Gazette,* No. 59, of 27 June 1965.

(*c*) Rules governing work with radioactive material, approved by the Ministry of Health and Welfare and by the Committee on the Peaceful Use of Atomic Energy of the Council of Ministers and published in the *Official Gazette,* No. 63, of 10 August 1965.

(*d*) Rules for protection from radiation used in gamma defectoscopy, approved by the Ministry of Health and Welfare and published in the *Official Gazette,* No. 95, of 3 December 1965.

3. Raising the level of living

(*a*) Order No. 58 of the Central Committee of the Bulgarian Communist Party, the Council of Ministers of the People's Republic of Bulgaria and the Central Council of Trade Unions, of 13 December 1965, on the raising of the people's level of living in 1966 and 1967, published in the *Official Gazette,* No. 99, of 17 December 1965. The Order is in the form of a programme and provides for a series of measures relating to wages

[1] Note communicated by Professor Anguel Angueloff of the University of Sofia, Legal Adviser to the Ministry of Foreign Affairs, correspondent of the *Yearbook on Human Rights,* appointed by the Government of the People's Republic of Bulgaria.

and social insurance, as a result of which workers will receive approximately 100 million (leva) more in 1966 and approximately 300 million (leva) more in 1967.

(*b*) Decree amending and supplementing the Decree concerning the raising of the birth rate and the encouragement of large families (*Official Gazette,* No. 99, of 17 December 1965), which provides for increases in lump-sum allowances upon the birth of a child and an increase in monthly allowances for children, which are paid in addition to wages and pensions to the families of workers, civil servants, members of handicraft co-operatives and retired persons.

(*c*) Decree amending and supplementing the Labour Code (*Official Gazette,* No. 99, of 17 December 1965), which provides for increased cash compensation in the case of temporary incapacity to work following a period of uninterrupted service. In the case of an employment accident or occupational disease, compensation is paid at the rate of 90 per cent, irrespective of the period of service.

(*d*) Decree authorizing retired persons engaged in agricultural work to receive the full amount of their pensions, published in the *Official Gazette,* No. 56, of 16 July 1965.

(*e*) Decree amending and supplementing the Decree concerning the raising of the birth-rate and the encouragement of large families (*Official Gazette,* No. 60, of 30 July 1965) provides for tax exemption for persons recognized as disabled (groups I, II and III) by the cancellation of the conditions previously stipulated.

4. LABOUR LEGISLATION. EXTENSION OF THE RIGHTS AND PRIVILEGES ACCORDED FOR A LONG PERIOD OF UNINTERRUPTED SERVICE

(*a*) Order No. 48 of the Council of Ministers of 9 November 1965 concerning the rights and privileges accorded for a long period of uninterrupted service in undertakings, government offices and organizations, an extract from which was published in the *Official Gazette,* No. 90, of 16 November 1965.

(*b*) The following should also be mentioned in this connexion:

(1) Decree cancelling article 150-a of the Labour Code, published in the *Official Gazette,* No. 1, of 5 January 1965 (the text will be cancelled as from 1 January 1965);

(2) Decree amending and supplementing article 177 of the Labour Code defining the concept of a long period of uninterrupted service within the meaning of the Labour Code;

(3) Amendment to paragraph 87 of the Regulations for the application of Part III of the Labour Code;

(4) Amendment to item 39 of the Ordinance on the renumeration of work in the case of interruption, replacement or simultaneous employment in several jobs, published in the *Official Gazette,* No. 90, of 16 November 1965.

BURUNDI

ROYAL ORDER No. 001/611 OF 24 DECEMBER 1964 ESTABLISHING THE BURUNDI NATIONAL COMMISSION FOR UNESCO [1]

Art. 1. A National Commission for UNESCO shall be established in Burundi under the authority of the Minister of Education and Culture.

...

Art. 5. The National Commission shall serve as a consultative, liaison and information agency and shall assume executive functions.

(*a*) The Commission shall serve as a consultative agency with regard to:

Consideration of the draft programme and budget of UNESCO;

Implementation of the resolutions of the UNESCO General Conference;

Participation in symposia, seminars and conferences organized by UNESCO.

(*b*) The Commission shall ensure permanent liaison:

Between the Kingdom of Burundi and the UNESCO Secretariat;

With the National Commissions of the various member countries;

Between the educational, scientific and cultural organizations of Burundi which are concerned with the aims and activities of UNESCO.

(*c*) The National Commission shall be responsible for:

Informing UNESCO about the various aspects of educational and cultural activity in Burundi;

Informing the public about the programme and work of UNESCO in Burundi and throughout the world;

Initiating action for the realization of the ideas of UNESCO in Burundi.

(*d*) The National Commission shall:

Submit to the competent authorities proposals suitable for implementation on the national level;

Propose and promote educational and cultural activities.

...

[1] *Bulletin officiel du Burundi*, No. 1, of 1 January 1965.

LEGISLATIVE ORDER No. 001/685 OF 29 MARCH 1965 INSTITUTING THE ELECTORAL CODE OF THE KINGDOM OF BURUNDI FOR ELECTIONS TO THE LEGISLATURE [2]

TITLE I

The National Assembly

CHAPTER I. GENERAL

Article 1

The National Assembly shall consist of thirty-three deputies elected by universal suffrage.

...

CHAPTER II. NOMINATION OF CANDIDATES

...

SECTION 2. ELIGIBILITY

Article 8

Persons of both sexes shall be eligible if, on the final date for the nomination of candidates, they:

possess Burundi nationality by birth or naturalization;
are domiciled in Burundi;
are at least twenty-five years of age;
enjoy civil and political rights;
have successfully completed two years of post-primary education or can show that they have equivalent experience, especially by engaging in some service or occupation.

[2] *Ibid.*, No. 3 b, of 29 March 1965.

Article 9

The following shall not be eligible:

1. Persons sentenced to penal servitude for more than five years during the twenty years preceding the final date for the nomination of candidates;

2. Persons sentenced to penal servitude for more than one year but not more than five years during the ten years preceding the final date for the nomination of candidates;

Provisions 1 and 2 above shall not apply to persons who have received an amnesty or to persons convicted for violating an administrative police decision or for offences committed through negligence.

3. Persons confined to an institution or hospital by reason of insanity;

4. Persons serving a prison sentence, except those who are in custody for violating an administrative police decision;

5. Members of the National Army or of the gendarmerie on active service;

6. Officials serving in the Cabinet of the King or in his personal service.

...

SECTION 4. ACTIONS OPPOSING NOMINATION

Article 15

An action opposing the nomination of a candidate may be brought before the Appeals Court not later than thirteen days before the date of the elections through the Provincial Governor, who shall attach his observations and supporting documents.

Article 16

The Appeals Court shall rule on actions opposing nomination not later than ten days before the elections begin. Copies of its ruling shall be sent to the Provincial Governor, the Burgomasters of the electoral district, the applicant and the candidate.

...

CHAPTER III. ELECTORS

...

SECTION 2. THE ELECTORATE

Article 21

Persons of either sex who are at least eighteen years of age and possess Burundi nationality at the time that the roll is closed shall be electors for the purpose of choosing members of the National Assembly.

The following shall not take part in the elections and shall not be entered in the roll:

1. Prisoners convicted for a criminal offence;

2. Persons held in legal custody under chapter III of the Code of Criminal Procedure;

3. Persons confined to an institution or hospital by reason of insanity;

4. Members of the National Army or the gendarmerie on active service;

5. Persons who took up residence in the electoral district less than three months before the date set for closing the rolls.

...

TITLE II

The Senate

CHAPTER I. GENERAL

Article 83

The Senate shall consist of sixteen senators, of whom eight shall be elected, four co-opted and four appointed.

...

Article 85

In order to become a senator a person must:

possess Burundi nationality by birth or naturalization;

be domiciled in Burundi;

be at least thirty-five years of age;

not have been sentenced to more than five years' penal servitude during the preceding twenty years, or to between one and five years' penal servitude during the preceding ten years.

The following persons may not be elected, co-opted or appointed senators or alternate senators:

persons confined to an institution or hospital by reason of insanity;

persons serving a prison sentence, except those who are in custody for violating an administrative police decision;

members of the National Army or the gendarmerie on active service;

members or alternate members of the National Assembly;

officials serving in the Cabinet of the King or in his personal service.

...

CHAPTER II. ELECTED SENATORS

SECTION 1. GENERAL

Each province shall elect one senator and his alternate.

The elected deputies in the province shall designate two of the candidates who have presented themselves for this purpose.

The National Assembly shall elect by a simple majority, from the two candidates thus nominated, the senator who is to represent the province concerned, the remaining nominee becoming automatically the elected senator's alternate.

SECTION 2.

NOMINATIONS AND APPEALS AGAINST THEM

...

Article 92

An appeal against a decision by the Provincial Governor relating to the acceptance or refusal of a nomination may be lodged with the Appeals Court not later than the third day following the final date for nomination of candidates.

The Provincial Governor shall be informed that an appeal has been lodged and shall transmit any supporting evidence to the Appeals Court.

The appeal shall be sent by registered post and shall state the identity and address of the appellant.

Article 93

The Appeals Court shall rule within three days.

If the Provincial Governor's decision is overruled, the Court shall declare the period for nominations to be reopened and shall set a new closing date for such nominations.

...

CHAPTER III. CO-OPTED SENATORS

Article 99

Within fifteen days of their election by the National Assembly, the eight elected senators shall designate by co-optation four other senators and their alternates.

They shall choose freely from persons fulfilling the conditions laid down in article 85 and accepting co-optation.

If, ten days after their election, the eight elected senators, under the provisional chairmanship of the oldest, have not succeeded in deciding unanimously on the complete list of the four co-opted senators and their alternates, they may, in groups of two elected senators, elect one co-opted senator and his alternate, each elected senator being entitled to participate only once in such co-optation.

If, at the end of the fifteen days, not all the offices of co-opted senator and alternate co-opted senator have been filled, the King, acting upon the advice of the Crown Council, shall appoint a person fulfilling the conditions set out in article 85 and accepting appointment to fill each of the vacancies.

CHAPTER IV. APPOINTED SENATORS

Article 100

On the advice of the Crown Council, the King shall appoint the last four senators and their alternates from among the persons fulfilling the conditions set out in article 85 and accepting appointment.

...

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1965 — REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR [1]

(EXTRACTS)

V. Rise in the material prosperity and cultural level of the people

The average annual number of manual and non-manual workers employed in the national economy of the Republic in 1965 was over 2.4 million, an increase of 7 per cent over the previous year.

During the year 30,500 young workers were trained in trade schools and vocational-technical schools. In addition, some 450,000 persons received advanced training and were taught new occupations through individual and group apprenticeship and courses conducted directly at enterprises and on collective farms.

At the end of 1964 and in 1965, 599,000 workers in branches of the national economy directly serving the population received wage increases. Workers in education received an average increase of 29 per cent, workers in health 30 per cent, workers in the housing and municipal services 25 per cent, and workers in trade and public catering 26 per cent.

The minimum pay of manual and non-manual workers was raised in all branches of the national economy where such an increase had not already been effected.

A State pension scheme for collective farmers was introduced with effect from the beginning of 1965. Persons receiving pensions from the Centralized Union of Collective Farmers' Social Security Fund had numbered about 500,000 at the end of the year, by which time a total of over 1.2 million manual and non-manual workers, collective farmers and members of their families were receiving pensions.

In 1965 the population of the Republic received out of social consumption funds grants and benefits amounting to more than 1,200 million roubles, or 18 per cent more than in 1964, in pensions, allowances, students' grants, paid vacations, free education, free medical care and other services.

The average cash earnings of all manual and non-manual workers in the national economy of the Republic rose in 1965 by 7.5 per cent over the 1964 level.

Individual deposits in savings banks increased by 89 million roubles, or 22 per cent, over the previous year and by the end of the year totalled 499 million roubles; the number of depositors increased by 99,000, or 7 per cent, and at 1 January 1966 was 1,516,000.

The volume of State and co-operative retail trade in 1965 amounted to 3,109,000 roubles, an increase of 12 per cent over 1964 in comparable prices. The retail turnover of consumer co-operatives trading in rural areas rose by 14 per cent in the same period.

The annual plan for retail trade turnover was fulfilled by 103 per cent; in particular, the Ministry of Trade fulfilled the plan by 102.5 per cent, and the Byelorussian Union of Co-operatives by 103 per cent.

On 25 April 1965, State retail prices for woollen, silk and linen fabrics, clothing and underwear, hosiery and other consumer goods were lowered. The saving to the population from this price cut was equivalent to 35 million roubles over the year.

Further progress was achieved in public education, science and culture.

In the past year over 2,537,000 persons received education of one type or another; 782,000 persons attended general education schools of all types, or 53,000 more than in 1964. About 170,000 persons completed the eight-year school and 47,000 completed secondary school. Enrolment in extended-day schools and classes and in boarding schools totalled over 119,000.

There are 226,000 persons receiving education in higher and specialized secondary educational establishments, 104,000 of these in higher educational establishments and 122,000 in technical colleges.

In 1965, 12,400 specialists graduated from higher educational establishments and 20,900 from specialized secondary educational establishments.

In the past year 65,500 persons were admitted to higher and specialized secondary educational establishments, 25,100 of them to the former and 40,400 to the latter.

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[1] Texts furnished by the Government of the Byelorussian Soviet Socialist Republic.

At the end of 1965 about 400,000 specialists with higher or specialized secondary education were working in the national economy. That number was 8 per cent higher than the 1964 level.

The number of scientific workers employed in scientific institutions, higher educational establishments and other organizations amounted to over 14,000 at the end of 1965.

The number of cinema attendances was over 131 million, an increase of 3 million over 1964.

There was large-scale construction of housing and public amenities. A total of about 2.5 million square metres of housing, financed both by the State and by manual and non-manual workers from their own resources and with the help of State loans, was brought into occupancy in towns and rural localities. This included 280,000 square metres of housing built by housing co-operatives, or 80 per cent more than in the previous year. In addition, more than 15,000 dwellings were built on collective farms (by the collective farms, collective farmers and the rural intelligentsia).

During the past year more than 320,000 persons in the Republic moved into new apartments and houses or improved their old dwellings.

Large-scale capital investment has been made in the construction of educational, cultural and health institutions.

Considerable work has been done to supply dwellings with gas. The number of apartments with gas rose during the year by 75,000, or 32 per cent.

Medical services to the population improved. The number of doctors in all categories increased during the year by more than 1,200. There was an increase in the number of beds in hospitals, sanatoria, rest-homes and boarding-schools.

The population of the Byelorussian SSR on 1 January 1966 was 8.6 million.

CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC FOR 1965, ADOPTED ON 23 DECEMBER 1964

(EXTRACTS)

The Supreme Soviet of the Byelorussian Soviet Socialist Republic hereby resolves:

Art 1. To approve the State budget of the Byelorussian SSR for 1965 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments adopted on the report of the Budget Commission of the Supreme Soviet of the Byelorussian SSR, providing for total revenue and expenditure of 1,687,802 roubles.

Art. 2. To establish the revenue from State and co-operative undertakings and organizations—turnover tax, tax on profits, income tax and other revenues from the socialist economy—under the State budget of the Byelorussian SSR for 1965 at the sum of 1,578,857 roubles.

Art. 3. To appropriate a total of 742,054 roubles under the State budget of the Byelorussian SSR for 1965 for the financing of the national economy—continued development of the chemical, petroleum-refining, machine-building and other branches of heavy industry, construction, light industry, the foodstuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy.

Art. 4. To appropriate a total of 855,690,000 roubles under the State budget of the Byelorussian SSR for 1965, including 140,567,000 roubles under the State social insurance budget, for social and cultural development—general education schools, specialized secondary schools, higher educational establishments, scientific and research institutions, workshop and factory training schools, libraries, clubs, theatres, the Press, broadcasting, and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances.

ORDER OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR ON THE FULFILMENT OF THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1964, ADOPTED ON 17 JUNE 1965

(EXTRACTS)

The Supreme Soviet of the Byelorussian SSR notes that as a result of the successful fulfilment of the main targets of the State plan for the development of the national economy, the more intensive employment of the labour force and the further improvement of economic and control work in the Council of National Economy and the ministries, departments and executive com-

mittees of the local Soviets of Working People's Deputies of the Republic in 1964, the budget revenues were collected in full, thus ensuring the uninterrupted financing of the measures provided for in the national economic plan and budget for 1964.

The plan for revenues under the budget of the Byelorussian SSR for 1964, as amended, was fulfilled 105.1 per cent. Some of the main components were as follows: turnover tax—103 per cent, tax on profits—102.4 per cent, income tax from collective farms—105.7 per cent, taxes from the population—102.9 per cent. The plan for expenditure under the State budget of the Byelorussian SSR was fulfilled 102.4 per cent, the major components being as follows: national economy—105.2 per cent, social and cultural measures—100.1 per cent, maintenance of organs of State administration—99.7 per cent.

As a result of the over-fulfilment of industrial production and sales plans and of the targets for increased labour productivity, lower production costs and increased output efficiency, the turnover tax produced 18.7 million roubles and the tax on profits 15.1 million roubles in budget revenues over the target figures. This made possible additional expenditure, necessitated by the growth of the national economy, and expenditure on social and cultural development, in a total amount of 26.5 million roubles.

ACT OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC CONCERNING THE ORGANS OF POPULAR CONTROL IN THE BYELORUSSIAN SSR, ADOPTED ON 22 DECEMBER 1965

In accordance with the USSR Act of 9 December 1965 concerning organs of popular control in the USSR, the Supreme Soviet of the Byelorussian Soviet Socialist Republic hereby resolves that:

Art. 1. The organs of Party and State control of the Byelorussian SSR shall be transformed into organs of popular control.

Art. 2. The organs of popular control in the Byelorussian SSR shall be the Committee of Popular Control of the Byelorussian SSR, the committees of popular control of regions, towns and districts, and popular control groups and posts at rural and settlement Soviets of Working People's Deputies, enterprises, collective farms, institutions, organizations and military units.

ORDER OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR CONCERNING FREE TRANSPORT FOR SCHOOL CHILDREN LIVING IN RURAL AREAS, ADOPTED ON 6 AUGUST 1965

In accordance with the Order of the Presidium of the Supreme Soviet of the USSR of 9 July 1965 on free transport for school children resident in rural areas, the Presidium of the Supreme Soviet of the Byelorussian SSR hereby resolves that:

1. As of 1 September 1965, regular free transport to and from school shall be provided everywhere in the Byelorussian SSR for pupils of elementary, eight-year and secondary general education schools resident in rural areas.

2. The Council of Ministers of the Byelorussian SSR shall prepare and carry out the necessary measures to introduce free transport for school children resident in rural areas, providing for the financing of such measures under the budget of the Republic.

In organizing free transport for school children, use shall be made of express buses, the transport facilities of State farms and other enterprises and organizations, suburban and local trains, and the transport facilities of collective farms.

ORDER OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR ON THE STATE OF AND MEASURES TO IMPROVE THE WORK OF BYELORUSSIAN CULTURAL AND EDUCATIONAL INSTITUTIONS, ADOPTED ON 22 OCTOBER 1965

(EXTRACTS)

The Supreme Soviet of the Byelorussian SSR RESOLVES:

1. To draw the attention of regional, city, district, settlement and village Soviets of Working People's Deputies in the Republic to the necessity of doing everything possible to improve the work of cultural and educational institutions for the ideological and political education of working people and the fullest possible satisfaction of their cultural needs.

Cultural and educational institutions must seek daily to co-ordinate their work with the practice of communist construction and publicize more widely the latest achievements of science and technology and the experience of leading workers in industry and agriculture.

2. To instruct the Ministry of Culture of the Byelorussian SSR and the local Soviets of Working People's Deputies and their executive committees:

To take steps to ensure that cultural centres, clubs, libraries, museums and parks of culture and rest become genuine centres for mass political, cultural and educational work and to ensure that in their activities wide use is made of the most efficacious forms and methods of work among the population;

To take steps to expand and rationalize the system of cultural and educational institutions, with particular attention to the unconditional necessity of fulfilling the plans for the construction of such institutions;

To give greater attention to supplying cultural and educational institutions with furniture, equipment, musical instruments and visual and methodological aids;

To ensure that routine and major maintenance of the premises of cultural centres, clubs, libraries and cinemas is carried out in good time and to develop the amenities and plant greenery on the sites adjacent to cultural institutions, turning them into places of rest for working people;

To take steps to increase and renew stocks of books and improve services to readers, to make greater use of inter-library loans of books and to give every support to any action taken to establish libraries on a voluntary basis;

To pay greater attention to improving the esthetic education of the population, particularly of young people, and to strive to develop amateur artistic activities; to strengthen and expand by all possible means the system of national and amateur theatres and choral and musical groups, introducing into their repertoire the best works of Soviet authors, and to arrange for more frequent reviews, reports on creative activity and competitions for amateur artistic groups and more frequent song festivals; to develop more widely patronage of rural cultural and educational institutions by professional associations and urban cultural institutions.

3. To instruct local Soviets of Working People's Deputies to ensure that standing committees and deputies play a greater and more active role in solving the practical problems of cultural construction and to do more to involve the community in the work of cultural and educational institutions.

To arrange for annual reports to the population by the directors of clubs, cultural centres, libraries, cinemas, museums and parks of culture and rest.

4. To instruct the State Committee of Cinematography of the Council of Ministers of the Byelorussian SSR and the executive committees of local Soviets of Working People's Deputies to ensure that the cinema plays a greater role in the communist education of the population. To provide in the next few years for the installation of stationary cinematographic projectors at all central buildings of collective and State farms. To create the necessary conditions for improving film showings with portable equipment.

To pay special attention to selecting, and improving the quality of, the films shown. To increase the number of showings for children. To organize regular showings of agricultural films, news and documentaries and popular scientific films at all rural cinematographic establishments, to make wider use of such films at lectures and discussions and to improve the technical handling of portable and stationary cinema equipment and films.

5. To instruct the Ministry of Culture of the Byelorussian SSR and the State Committee on Construction of the Council of Ministers of the Byelorussian SSR to prepare standard plans in 1966 for rural cultural centres and libraries, making wide use of local building materials.

6. To recommend the Byelorussian Republican Trade Union Council to improve further the activities of the cultural institutions operated by the trade unions, and to give them a greater role in mass political, cultural and educational work among manual and non-manual workers and members of their families.

7. To instruct the Council of Ministers of the Byelorussian SSR to examine questions relating to the construction and supply of materials and equipment to cultural and educational institutions and to the expansion of initial and advanced training courses for personnel for these institutions, and to consider proposals and comments put forward by deputies at the session of the Supreme Soviet and take appropriate decisions on them.

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The Supreme Soviet of the Byelorussian SSR expresses the conviction that the local Soviets of Working People's Deputies and their executive committees, ministries and departments, the Byelorussian cultural and educational institutions and the public will make every effort to raise the cultural services to the population in the near future to the level of the requirements arising out of the historic decisions of the Twenty-Second Congress and the Programme of the Communist Party of the Soviet Union.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR ON AMENDMENTS TO THE CODE OF ACTS ON MARRIAGE, THE FAMILY AND GUARDIANSHIP OF THE BYELORUSSIAN SSR, ADOPTED ON 31 DECEMBER 1965

(EXTRACTS)

In accordance with the Decree of the Presidium of the Supreme Soviet of the USSR of 10 December 1965 amending the procedure for the judicial hearing of divorce suits, the Presidium of the Supreme Soviet of the Byelorussian SSR resolves:

1. To amend articles 30 and 31 of the Code of Acts on Marriage, the Family and Guardianship of the Byelorussian SSR to read as follows:

"30. The district (urban) people's court shall ascertain the grounds upon which the divorce petition has been filed and take steps to reconcile the spouses.

"The district (urban) court may postpone its hearing of the suit and designate a time-limit for the reconciliation of the spouses.

"If no reconciliation takes place and the court satisfies itself that the continued cohabitation of the spouses and the preservation of the family have become impossible, the district (urban) people's court shall declare the marriage dissolved.

"31. In declaring a marriage dissolved, the district (urban) people's court shall:

"(*a*) Make orders as to the custody and maintenance of the children;

"(*b*) Determine the specific or proportionate division of the property between the parties;

"(*c*) Restore to each divorced spouse, on request, his or her surname before marriage;

"(*d*) Determine the sum to be paid by one or both parties when a divorce certificate is issued to them."

INSTRUCTIONS CONTAINING RULES FOR PAYMENT FOR LEGAL ASSISTANCE FURNISHED BY LAWYERS TO CITIZENS, ENTERPRISES, INSTITUTIONS, STATE FARMS, COLLECTIVE FARMS AND OTHER ORGANIZATIONS. CONFIRMED BY ORDER OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR OF 30 NOVEMBER 1965

(EXTRACTS)

4. Legal assistance shall be furnished by the lawyer free of charge in the following cases:

(*a*) The provision of explanations and information to citizens concerning legal questions, except as provided in paragraph 5, sub-paragraph (*f*) of these Instructions;

(*b*) The pleading of suits for the recovery of alimony;

(*c*) The pleading of labour cases;

(*d*) The pleading of suits for damages caused by maiming or other injury to health sustained at work;

(*e*) The pleading of suits for compensation to the dependants of a deceased person;

(*f*) The preparation of applications for pensions and allowances;

(*g*) The preparation of applications, complaints and other legal documents—not requiring the lawyer to familiarize himself with a judicial case—for members of the armed forces on active service and for Category I and II invalids;

(*h*) The preparation of applications and complaints and in giving advice in enterprises, institutions, State farms, collective farms and other organizations, and in the reception offices of executive committees of Soviets of Working People's Deputies, military commissariats and propaganda centres;

(*i*) The pleading of suits brought against collective farms by their members for the recovery of payment for days worked.

In the cases referred to in sub-paragraphs (*b*), (*c*), (*d*), (*e*) and (*i*) above, free assistance shall be given only to the plaintiff.

The Presidium of the College of Advocates and the head of the legal consultation office shall have the right to waive payment for additional types of legal assistance in individual cases, depending on the financial circumstances of the citizens concerned.

5. The fees payable for the preparation of legal documents (applications, agreements, complaints, etc.) by a lawyer shall be as follows:

...

(*f*) For consultation on the law and giving advice on legal questions requiring the lawyer to familiarize himself with judicial and other documents: not more than two roubles.

No fee shall be charged for the preparation of an appeal by a lawyer representing a person in criminal or civil proceedings in a court of first instance.

ORDER OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA AND THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON IMPROVING SERVICES TO THE PEOPLE OF THE BYELORUSSIAN SSR, ADOPTED ON 19 JUNE 1965

(EXTRACTS)

The Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR consider that Party, trade-union and Young Communist organizations and the executive committees of regional, city and district Soviets of Working People's Deputies should concentrate on improving the work of enterprises providing services to the population. Greater attention must be given to the management of organizations and enterprises providing such services and to supervision of their activities. They must be given practical assistance in raising the level of educational work and their staff must be strengthened by providing them with specialists having higher or secondary education and with skilled workers.

ORDER OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON LOANS TO FINANCE CONSTRUCTION OF DWELLINGS FOR COLLECTIVE FARM WORKERS, ADOPTED ON 11 MARCH 1965

The Council of Ministers of the Byelorussian SSR resolves:

1. To take note of and be guided by the fact that the Council of Ministers of the USSR in its Order No. 95 of 19 February 1965:

Instructed the State Bank of the USSR to grant loans to collective farm workers for the construction of individual dwellings in rural areas for a period of up to seven years;

Decided that such loans should be repaid upon completion of the construction of the house, quarterly (in equal portions per month), over the period for which the loan is granted.

2. In pursuance of Order No. 95 of the Council of Ministers of the USSR of 19 February 1965:

...

(*b*) To instruct the Central Administration for Construction on Collective Farms of the Council of Ministers of the Byelorussian SSR, the Central Administration for Communal Services and Local Industry of the Council of Ministers of the Byelorussian SSR and the regional executive committees to take steps to give collective farms assistance in building dwellings for their workers and to increase the output of cheap local building materials in order to satisfy the collective farms' demand for such materials for the construction of dwellings for their workers;

(*d*) To instruct the State Planning Commission of the Byelorussian SSR and the regional executive committees, when allocating building materials, to take into account the needs of collective farm workers for the construction and maintenance of houses.

CAMBODIA

KRÂM No. 257 OF 19 AUGUST 1965 [1]

Article 1. Every Cambodian citizen of both sexes between the ages of ten full years and fifty, with the exception of the disabled and the mentally ill, must learn to read and write Khmer and to calculate, starting from 1 January 1966.

...

Article 4. Upon designation by the Administration or request by an illiterate, any Cambodian citizen of either sex who has attained his majority, with the exception of the disabled and the mentally ill, and who has a minimum seven-class educational level shall be under a duty to teach illiterates to read and write Khmer and to calculate.

Article 5. Any Cambodian citizen found not to have performed the obligation laid down in article 4 above shall be liable to a fine of 100 riel to be paid into the national budget.

The rules and regulations for the organization of literacy classes and for the appointment of teachers in the campaign against illiteracy shall be the subject of *Prakas* issued by the Ministry of National Education.

[1] Information furnished by the Government of Cambodia.

CAMEROON

NOTE [1]

In the sphere of human rights, the year 1965 saw:

1. The promulgation of Book I of the new Federal Criminal Code, [2] which unifies "general" criminal law for the whole of the Federation.

2. Substantial simplification of the hearing of administrative cases under Act 65-LF-29 of 19 November 1965. The Act vests sole responsibility for the hearing of all administrative cases, whether federal or State, in the Federal Court of Justice and its Buéa and Yaoundé sections.

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[1] Note furnished by the Government of the Federal Republic of Cameroon.

[2] By law No. 65-LF-24 of 12 November 1965.

CANADA

NOTE [1]

I. FEDERAL LEGISLATION

Income Security

Perhaps the most significant single development in the Canadian social security system took place on 3 April 1965 when the Canada Pension Plan, [2] a comprehensive and complex social insurance programme, received Royal Assent. Essentially designed as a system which would provide access to an organized retirement programme, not hitherto available to the majority of working Canadians, the Canada Pension Plan will also provide benefits for disabled contributors and their dependent children and, on a contributor's death, benefits to widows and orphans as well as a lump sum death benefit.

Canada retirement pensions will be based on the contributor's long-term earnings pattern. Retirement pensions will amount to 25 per cent of the contributor's earnings of up to $5,000 a year. This ceiling on pensionable earnings will vary in future with changing price and wage levels so that the Canada retirement benefit, in combination with old age security benefits, will continue to form a reasonable minimum level of retirement income which could readily be supplemented on a private basis. Transitional provisions will apply in the first ten years of the programme. During this period a partial retirement pension will be available.

After April 1970 benefits will be available to disabled contributors and their dependent children. The benefit for the disabled contributor will be partly earnings-related and partly flat-rate in nature. Where the contributor has dependent children a flat-rate benefit will be paid in the amount of $25 for each of the first four children, and $12.50 a month for each additional child.

Beginning in February 1968 the Canada Pension Plan will provide benefits for widows, disabled widowers and orphans of deceased contributors. In addition, a lump sum death benefit will be payable to the contributor's estate.

For widows under 65 years of age who are disabled or caring for dependent children, pensions are equal to $25 a month plus 37.5 per cent of the husband's retirement pension. A reduced pension may be payable to young widows who are able to continue in or return to the labour force. Since the financial situation of a widow may change after the age of 65, for example through receipt of old age security benefits or Canada retirement benefits, the legislation provides that the widow's pension will be recalculated in order to take account of her changed financial circumstances. Much the same provisions apply for disabled widowers who have been wholly or substantially maintained by the wife at her death. Benefits for orphans are flat rate in nature and are equal in amount to the benefits provided for dependent children of disability pensioners.

The Plan will be financed through a system of employer and employee contributions. The tax base of these contributions will be earnings from work done up to a contributory ceiling ($5,000 in the first years of the Plan). This contributory ceiling will vary with changing wage and price levels. The first $600 of annual earnings is exempt for contribution purposes. This exemption level will also be adjusted automatically in future. Employees will contribute at a rate of 1.8 per cent with employers making an equivalent contribution. Self-employed persons will contribute at the rate of 3.6 per cent.

Because of the significant impact of the Canada Pension Plan on existing provisions, particularly in the area of old age income maintenance, adjustments were made in the old age security programme to allow it to fill a more complementary role. Thus the Old Age Security Act was amended by the Canada Pension Plan legislation [3] to allow for a gradual reduction in the minimum qualifying age beginning in 1966. The minimum qualifying age, originally 70, will be reduced a year at a time so that for 1970 and thereafter old age security benefits will be available to qualified persons from age 65. This time schedule parallels that established for Canada retirement pensions. In addition it has been provided that from 1968 on the old age security benefits will be automatically escalated with changing price levels. This will be accomplished through a specially constructed pension index also used to adjust Canada Pension Plan benefits. A further significant change in the old age security programme is the liberalization of residence requirements. Thus qualified persons

[1] Note furnished by the Government of Canada.

[2] *Statutes of Canada*, 1965, c. 51.

[3] *Ibid.*

who have had 40 years' residence in Canada after age 18 may now receive old age security benefits without the previous requirement of residence during the year immediately preceding approval of application.

The Canada Pension Plan operates in all parts of Canada except where a province establishes its own comparable programme. The province of Quebec has enacted legislation [4] to establish a comparable measure in that province. However, the two plans will be closely co-ordinated to ensure portability. Thus, for example, if an employee covered by the Canada Pension Plan takes up employment in Quebec his contribution to the Quebec Pension Plan will produce the same benefits as if they had been made to the Canada Pension Plan.

Labour Standards

Parliament enacted the Canada Labour (Standards) Code, [5] which laid down standards of minimum wages, hours of work, annual vacations and general holidays for employees subject to federal labour jurisdiction, effective from 1 July 1965. It provides for a minimum wage of $1.25 an hour for employees 17 years and over; a standard 8-hour day and 40-hour week; time and one-half for overtime, which is normally limited to 8 hours in a week; and eight general holidays with pay and annual vacation of two weeks with pay. The Code does not set an absolute minimum age for employment but regulations [6] lay down conditions under which young persons under 17 years may be employed in federal undertakings.

Manpower Mobility

As an additional step in the Government's programme to use available manpower resources effectively and reduce unemployment, provision was made for loans or grants to unemployed workers to assist them and their families to move to and resettle in areas where employment is available. [7]

II. PROVINCIAL LEGISLATION

Anti-Discrimination Measures

The Ontario Human Rights Code was amended [8] to provide strengthened guarantees against discrimination in employment, housing and public accommodation. The prohibition against discrimination in connexion with the occupancy of an apartment in a building with six or more self-contained apartments, was extended to buildings with more than three self-contained dwelling units. Discrimination in connexion with the occupancy of any commercial unit on grounds of race, creed, colour, nationality, ancestry or place of origin was also prohibited. The section prohibiting discrimination in public places was also amended to cover situations where, for example, one party to an inter-racial marriage is denied accommodation in a place to which the public is customarily admitted because of the race of the other party to the marriage. Another amendment made the Code applicable to the Government and its agencies.

Nova Scotia established a division of social development within its Department of Public Welfare, which will be concerned primarily with communities in the province that are under a social disadvantage, in particular the Negro communities. A Human Rights Conference during the year concentrated on the problems of the Negro population in Nova Scotia with respect to housing opportunities for Negroes.

Administration of Justice

Quebec revised its Code of Civil Procedure, [9] simplifying procedures to make them more suited to present needs and to ensure litigants a more rapid and less onerous system of justice. Among other changes, the petition of right—the procedure whereby a person had to petition the Attorney-General for permission to sue the Government—was abolished with the result that the Crown may now be sued in the same manner as an ordinary citizen. The requirement to post security as an essential condition to the exercise of the right of appeal in damage cases was virtually eliminated.

Civil Liberties

In two provinces, Alberta [10] and Manitoba, [11] committees of the Legislature were required to consider ways and means of safeguarding the rights of individual citizens vis-à-vis the State. In particular, they were to examine jurisdiction and powers conferred upon administrative boards and tribunals and to study and make recommendations as to whether there was need for a tribunal to which aggrieved individuals could refer decisions or actions of regulatory boards and tribunals and departments and agencies of government.

Franchise

Two provinces, Alberta and Saskatchewan, made improvements in their election laws. In Alberta, the Election Act was amended [12] to extend to Indians, as defined in the Federal Indian Act (broadly speaking those who live on reserves), the right to vote in provincial elections.

A number of improvements were made to the Saskatchewan Election Act, [13] some of which were designed to prevent confusion. The absentee ballot was largely eliminated and members of

[4] *Statutes of Quebec,* 1965, c. 24.

[5] *Statutes of Canada,* 1964-65, c. 38.

[6] SOR/65-256, gazetted 25 June 1965.

[7] SOR/65-563, gazetted 22 December 1965.

[8] *Statutes of Ontario,* 1965, c. 85.

[9] *Statutes of Quebec,* 1965, c. 80.

[10] *Votes and Proceedings of the Legislative Assembly of the Province of Alberta,* Second Session, Fifteenth Legislature, No. 35, April 1, 1965, p. 1.

[11] *Votes and Proceedings of the Legislative Assembly of Manitoba,* Fourth Session, Twenty-Seventh Legislature, May 1, 1965, No. 49, p. 3.

[12] *Statutes of Alberta,* 1965, c. 23.

[13] *Statutes of Saskatchewan,* 1965, c. 91.

the Armed Forces were given the same voting privileges as other citizens.

Medical Care Insurance

Two provinces, British Columbia and Ontario, passed legislation to provide for medical care insurance. Under the Medical Grant Act[14] of British Columbia passed in March 1965, a comprehensive prepaid medical care plan became available to all residents of the province on an individual subscription basis. The British Columbia Medical Plan, incorporated as a non-profit society, administers the programme which was implemented on 1 September 1965. The province makes an annual grant of one million dollars toward the financing of the programme and pays one-half of the premium of persons who had no taxable income in the preceding year and one-quarter of the premiums of persons with taxable income of $1,000 or less.

In Ontario, the Medical Services Insurance Act,[15] passed in June 1965, established a plan, to commence in July 1966, to offer insurance against the cost of physicians' services to all residents of the province.

General Assistance

A number of provinces increased their rates of assistance during the year. Newfoundland raised the boarding allowance, effective on 1 April 1965, from $80 to $90 a month for a person who is ambulatory.[16] Ontario raised the amounts allocated to the pre-added budget (i.e. for food, clothing and sundries), rent and fuel, and set the maximum monthly allowance per family at $300 irrespective of the number of persons in the family.[17] Formerly maximum amounts were set according to the size of the family, with a maximum amount of $180 for a family of seven or more. Manitoba increased allowances for utilities and raised the fuel allowance authorized for the months October to May inclusive.[18] Alberta, as a result of the annual review of rates, increased amounts for food and clothing for recipients of provincial allowances.[19]

In Ontario, the allowable monthly income, including the allowance, for a single person receiving an incapacitation allowance, was raised from $70 to $105.[20] Of particular significance in the development of improved standards in the administration of public welfare were the steps taken in Ontario and Saskatchewan to provide for reimbursement by the province to counties or municipalities for costs of administration of welfare services. In Ontario the subsidy payable by the province, effective from 1 November 1965, to a county is equal to 50 per cent of the cost of salaries paid to a welfare administrator and other members of the staff employed full time in the administration of welfare services, together with the cost of those travelling expenses directly related to the administration of welfare services. These services include the administration of programmes of assistance, and services for such purposes as the following: rehabilitation, including vocational assessment and counselling; placement in employment; counselling in respect to family or marital relationships, child care and training, debts, household management, nutrition, health and personal hygiene. All staff administering welfare services must have the qualifications required by the Minister of Public Welfare, and their salaries or salary ranges are subject to approval by the Minister.[21]

In Saskatchewan, the Department of Welfare is authorized "upon such conditions as the Minister deems advisable" to share with any municipality the costs of administering social aid.[22]

In Saskatchewan it is now required that if an official refuses aid to an employed or self-employed person who has applied for assistance on the basis of extreme hardship, he must inform the applicant of his right to have his application reviewed by the regional administrator of the Department of Welfare, and of his right to a final review by the Director of Public Assistance.[22] Also, a minimum interim allowance may be granted a recipient of an old age security pension or of blindness allowance who applies for a supplemental allowance if eligibility cannot be determined immediately and need is urgent.[23]

Mothers' Allowances

Two provinces, Ontario and Saskatchewan, amended their regulations governing aid to needy mothers with dependent children.

In Saskatchewan, regulations were amended to provide that if eligibility for aid cannot be determined immediately and need is urgent, minimum interim aid may be granted pending the determination of eligibility.[24] In Ontario, rates of allowances were increased for food and clothing and shelter and the maximum allowance payable per family raised from $180 to $300 irrespective of the number in the family. Formerly, maximum amounts were set according to the number of beneficiaries in the family with

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[14] *Statutes of British Columbia*, 1965, c. 25.

[15] *Statutes of Ontario*, 1965, c. 70.

[16] The Social Assistance (Consolidated) (Amendment) Regulations, 1965, gazetted 26 October 1965.

[17] O. Reg. 106/65 under The General Welfare Assistance Act, gazetted 15 May 1965 and O. Reg. 63/65, gazetted 20 March 1965.

[18] Manitoba Regulation 20/65 under the Social Allowance Act, gazetted 27 March 1965.

[19] Alberta Regulation 128/65 under The Public Welfare Act, gazetted 31 March 1965.

[20] O. Reg. 106/65 under The General Welfare Assistance Act, gazetted 15 May 1965.

[21] The Department of Public Welfare Amendment Act, 1965, *Statutes of Ontario*, 1965, c. 30.

[22] Saskatchewan Regulation 227/65 under The Social Aid Act, The Social Aid Regulations, gazetted 6 August 1965.

[23] Saskatchewan Regulation 221/65 under The Social Aid Act, The Supplemental Allowance Regulations, gazetted 6 August 1965.

[24] Saskatchewan Regulation 226/65 under the Social Aid Act, The Aid to Dependent Family Regulations, gazetted 6 August 1965.

$180 as the maximum for a family of seven or more beneficiaries. The rate of allowances payable to a foster mother on behalf of one child was raised from $30 to $40, the amount for each additional child also increased by $10 a month.[25] Dental services were extended to all recipients including the mother; previously these services were restricted to recipients under eighteen years of age.[26]

Child Welfare

Among the changes in child welfare legislation in 1965, the most significant was the passage of the Child Welfare Act, 1965,[27] in Ontario, which was assented to on 22 June 1965 and proclaimed effective from 1 January 1966. Major provisions of the Act include the following: All permanent wards are to be wards of the Crown rather than, as formerly, of the children's aid societies; however, the care of such wards continues to be the responsibility of children's aid societies. The province now assumes full financial responsibility for children of unmarried parents for whom assistance is required, thus eliminating the contribution formerly required from the municipality of the mother's residence. The functions and duties of a children's aid society now include "guidance, counselling and other services to families for protecting children and/or the prevention of circumstances requiring the protection of children". Any person having information of the physical ill-treatment, desertion or need for protection of a child is required to report the information to a children's aid society or to the Crown Attorney, and the informant is protected against civil action. The judge of a juvenile and family court is required to appoint the Official Guardian or another person to be the guardian *ad litem* of a parent under the age of twenty-one years whose child has been brought before the court as being in need of protection. A similar requirement applies to the safeguarding of the rights of a minor if either an unmarried mother or a putative father is under twenty-one years of age and an application is made to the court for an affiliation order. It is forbidden to publish or broadcast the name of a child or his parent concerned in an application, trial or appeal involving neglect, except with the permission of the person holding the hearing. Regulations under the Act[28] specify for the first time the qualifications required for directors and social workers employed by children's aid societies.

Under the Training Schools Act, 1965,[29] of Ontario the power of committing a child to a training school by an administrative hearing has been eliminated and children may now be sent to a training school only on a court order. Also, it is now specified that children under the age of twelve years may not be committed to a training school.

British Columbia amended the Children of Unmarried Parents Act[30] to extend the financial responsibility of the putative father for the unmarried mother from three to six months prior to the birth of the child.

The Training School Act of New Brunswick was amended[31] to limit the length of time which the superintendent of a training school may place a boy with a "respectable and trustworthy" person. Formerly the superintendent could bind a child to such a person for five years from the commencement of imprisonment without his consent; the amendment limits the period of placement which may not extend beyond the term of his sentence or commitment.

Nova Scotia amended the Adoption Act[32] to permit a husband under the age of twenty-one years to adopt the child of his wife, if she is over the age of twenty-one years. An amendment to the Child Welfare Act[33] now permits the placement of a ward with a family where the husband and wife are of different religious faiths, provided that one of them is of the same faith as the ward and that both agree in writing that he will be brought up and instructed in his own faith.

In Newfoundland the Child Welfare Act[34] was amended to provide a limit of thirty-six months as a period of continuous temporary wardship for a neglected child, and a limit of twenty-four months as a period of continuous temporary wardship for a delinquent child.

Living Accommodation for the Aged

A number of provinces amended existing legislation or passed new legislation which includes provisions to safeguard the rights of residents of homes providing accommodation for the aged. In Newfoundland, provision is made for appeal to the Minister of Public Welfare from a decision of the Social Assistance Board regarding admission to the Hoyles Home for the aged and infirm; the Minister may confirm, reverse or vary the Board's decision. It is now provided that the attending physician of the institution is to have the care of the health of a patient only with the patient's consent.[35]

New provisions relating to licensing of homes providing special care were passed in Nova Scotia and Saskatchewan. In Nova Scotia, under the Boarding Homes Act[36] assented to on 30 March 1965, to become effective on 1 January 1966, boarding homes providing food and lodging together with care or attention for four or more persons who, because of age, infirmity or other disability require such care, must be

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[25] O. Reg. 62/65 under The General Welfare Assistance Act, gazetted 20 March 1965.

[26] O. Reg. 98/65 under The General Welfare Assistance Act, gazetted 8 May 1965.

[27] *Statutes of Ontario,* 1965, c. 14.

[28] Regulations under The Child Welfare Act, 1965, (O. Reg. 271/65) gazetted 13 November 1965.

[29] *Statutes of Ontario,* 1965, c. 132.

[30] *Statutes of British Columbia,* 1965, c. 3.

[31] *Statutes of New Brunswick,* 1965, c. 42.

[32] *Statutes of Nova Scotia,* 1965, c. 17.

[33] *Ibid.,* 1965, c. 21.

[34] *Statutes of Newfoundland,* 1965, c. 60.

[35] The Hoyles Home (Administration) Regulations, 1965, gazetted 23 November 1965.

[36] *Statutes of Nova Scotia,* 1965, c. 3.

licensed by the Minister of Public Welfare and must meet specified standards. In Saskatchewan, under the Housing and Special-care Homes Act, 1965 [37] licensing requirements governing homes caring for the aged, infirm or blind, were made more comprehensive than the former provisions. Under this Act, also, authority is given the Minister of Welfare to continue to operate and to establish, as required, Geriatric Centres for the care of persons with long-term illness.

Labour Relations

New legislation designed to improve labour-management relations was adopted in six provinces.

Four provinces gave certain government employees the right to bargain collectively regarding salary matters and other conditions of employment, with two permitting strike action, subject to certain limitations. A new Civil Service Act in Quebec [38] gave provincial civil servants, other than supervisory or managerial personnel or persons who act in a confidential capacity in labour relations matters, the right to bargain collectively. All except peace officers now have the right to affiliate provided they do not engage in partisan politics or make contributions to a political party and also have the right to engage in strike action, provided there is a prior agreement with the Government regarding the maintenance of essential services. In Nova Scotia, [39] employees of government boards and commissions, other than those appointed by the Civil Service Commission or under an executive order, were brought under the general labour relations law but cannot resort to strike action until 30 days after the time limit prescribed for employees in the private sector.

In Alberta [40] and Manitoba, [41] amendments to the civil service legislation replaced a system of consultation by a modified form of collective bargaining applicable to all civil servants except those exercising management functions.

Under this modified form of collective bargaining the existing employee organizations are recognized as the bargaining agents for government employees as long as they retain their majority status; time limits for bargaining procedures are imposed, and agreements reached must be incorporated in signed collective agreements. In the event of a stalemate, there is provision for third party mediation for all covered employees in Manitoba and for employees of boards and commissions in Alberta but the final say in each case rests with the Government.

In Quebec, [42] amendments to the Labour Code gave teachers the right to engage in strike action, with provision for government intervention in times of emergency. Previously, teachers were forbidden to strike and were obliged to refer all disputes to arbitration.

In Ontario, a new statute, [43] the Ontario Hospital Labour Disputes Arbitration Act, 1965, prohibited strikes and lockouts in hospitals and other institutions for the care and treatment of the sick and provided for compulsory and binding arbitration of all contract negotiation disputes, with the costs to be borne by the provincial government. Employees of such institutions are entitled to all benefits under the general labour relations law except that, in the event of dispute, they must continue bargaining for a specified period after the usual conciliation process has been completed, and are forbidden to engage in strike action.

Ontario also brought civilian employees of a police force under the Police Act, [44] which means that such employees may no longer engage in a strike but must refer disputes to arbitration.

Employment Standards

A number of provinces made improvements in their labour standards legislation, raising or extending existing standards and in some cases introducing new benefits.

General minimum wage rates were increased in five provinces, [45] Alberta, Manitoba, Nova Scotia, Quebec and Saskatchewan. In Nova Scotia, the new rates were, for the first time, made applicable to male employees, and in Alberta and Saskatchewan, the age limit for payment of adult rates was lowered. Alberta and Manitoba provided for the removal of differentials in the minimum rate between urban and rural areas over a period of one year.

Alberta issued new regulations [46] requiring employers to give their employees five paid holidays a year, making Alberta the second province, after Saskatchewan, to provide for statutory holidays with pay.

Alberta also issued a new order [47] extending the 44-hour week, previously in effect only in places with a population of more than 5,000, to all parts of the province, effective from 1 January 1966.

Workmen's Compensation

Seven provinces amended their workmen's compensation laws, [48] to increase benefits to injured workmen or their dependants.

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[37] *Statutes of Saskatchewan*, 1965, c. 64.

[38] *Statutes of Quebec*, 1965, c. 14.

[39] *Statutes of Nova Scotia*, 1965, c. 53.

[40] *Statutes of Alberta*, 1965, c. 75.

[41] *Statutes of Manitoba*, 1965, c. 11.

[42] *Statutes of Quebec*, 1965, c. 50.

[43] *Statutes of Ontario*, 1965, c. 48.

[44] *Ibid.*, c. 99.

[45] Alberta Reg. 179/65, gazetted 30 April 1965; Manitoba Reg. 102/65, gazetted 30 October 1965; Nova Scotia General Minimum Wage Order, gazetted 9 June 1965; O.C. 1765, gazetted 18 September 1965; Saskatchewan Reg. 61/65 and 65/65, gazetted 15 April 1965.

[46] Alberta Reg. 181/65, gazetted 30 April 1965.

[47] Alberta Reg. 180/65, gazetted 15 April 1965.

[48] *Statutes of Alberta*, 1965, c. 102; *Statutes of British Columbia*, 1965, c. 50; B.C. Reg. 198/65, gazetted 12 November 1965; *Statutes of Manitoba*, 1965, c. 91; *Statutes of New Brunswick*, 1965, c. 48; *Statutes of Nova Scotia*, 1965, c. 58; *Statutes of Ontario*, 1965, c. 142; *Statutes of Saskatchewan*, 1965, c. 53.

One province, British Columbia, introduced a new feature in that pensions to dependent widows and children and to disabled workmen are henceforth to be adjusted to living costs in accordance with a formula based on increases in the Consumer Price Index published by the Dominion Bureau of Statistics. The maximum yearly earnings on which compensation may be paid was increased in four provinces, Alberta, Manitoba, New Brunswick and British Columbia, with the latter providing for future periodical increases in the ceilings if earnings increase with the formula contained in the Act.

Three provinces—British Columbia, Ontario and Saskatchewan—set higher minimum payments for total disability. New Brunswick removed the annual limit on rehabilitation expenditures and Alberta provided for a clothing allowance to an injured workman.

Three provinces—Alberta, British Columbia and Nova Scotia—raised the monthly pension to a widow, and also increased the allowances to children and extended the age limits for payment. Nova Scotia and British Columbia increased the payments to dependants other than a widow and children. Coverage was extended in three provinces. One province, Ontario, provided for compulsory coverage for farm workers, making Ontario the first province to do so. Three provinces—Alberta, Nova Scotia and Saskatchewan—broadened the list of compensable industrial diseases.

III. JUDICIAL DECISIONS

In *Regina* v. *Leach, Ex parte Bergsma*[49] the Ontario Court of Appeal on 22 July 1965, upheld the right of atheists to become naturalized citizens of Canada. The Court rules that the lack of religious belief, alone, is not a ground upon which a Citizenship Court should decide against the granting of citizenship under the Canadian Citizenship Act.[50]

The Court held that when a person applying for citizenship is lacking religious belief, the oath of allegiance ending with the words "So help me God" as prescribed by the Citizenship Act should be replaced by an affirmation of allegiance instead of oath.

The Court took this attitude in considering that the Canada Evidence Act[51] and the Oaths of Allegiance Act[52] as applied by the Ontario Evidence Act[53] each provide for an affirmation in lieu of an oath where a person is unwilling to be sworn on the ground of conscientious scruples. "Conscientious scruples" is not defined by the statutes. However, the Court held that this expression should be interpreted liberally. It would include the case where certain people, by reason of their religious beliefs, consider an oath to be blasphemy. It would also include those who honestly fail to grasp the spiritual conception of a Supreme Being who metes out punishment. In such circumstances an oath would be meaningless. Conscientious scruples, in the opinion of the Court, consist of those genuine internal convictions and intellectual objections which render an oath meaningless or obnoxious. In the situation when the applicants for citizenship in their minds entertained certain honest convictions and intellectual doubts which persuaded them to reject the idea of the existence of a Supreme Being, they should not take the oath, but should take, as they are entitled to do, an affirmation of allegiance in the like terms as the oath of allegiance. The right to do so is in the exceptions provided in the statutes. This right is, in the opinion of the Court, of general application.

In *Re Immigration Act; Re Kokorinis*[54] the Supreme Court of British Columbia on 29 June 1965, quashed a deportation order on the ground that during the deportation proceedings before a Special Inquiry Officer an alien was deprived of his right to counsel as provided by the Immigration Act.[55]

The Court held that a Special Inquiry Officer exceeded his jurisdiction by misinterpreting the Act when he advised an alien that he had a right to be represented by counsel but that counsel "does not necessarily have to be a lawyer, but can be a friend, businessman, priest or any person of your choice". As the result of this advice the alien selected as his "counsel" his non-legally trained sister-in-law who actually was not pleading his cause, but in fact opposing it. The Court held that the Inquiry Officer gratuitously proceeded to give to an alien a definition of "counsel" which was not provided by the statute and that the Parliament in enacting the Immigration Act intended that the persons liable for deportation should be afforded the right to obtain and be represented by a person trained in Canadian Law.

In *Regina* v. *Magistrate Taylor, Ex parte Ruud*[56] the Saskatchewan Court of Queen's Bench on 21 January 1965, upheld the right of an accused person to be defended by counsel of his choice. The Court considered an application for an order prohibiting a Magistrate from further proceeding against the applicant who was charged under the Narcotic Control Act.[57]

The Magistrate insisted on trying the case and at the same time refused to proceed with counsel chosen by the accused person merely because of a personal vendetta between the Magistrate and counsel. The Court restated two principles engrained in the Canadian judicial system, namely, that no judge may deny an accused person the right to be defended by counsel of his choice, and, that it is of the utmost importance that not only justice be done but that it appears to the public to have been done. The Court ruled that the Magistrate was subject to prohibition by reason of bias and because of loss of jurisdiction by refusing to permit the accused person to be represented by counsel of his choice.

[49] (1966) 52 D.L.R. (2d) 594.
[50] R.S.C. 1952, c. 33.
[51] R.S.C. 1952, c. 307.
[52] R.S.C. 1952, c. 197.
[53] R.S.O. 1960, c. 125.
[54] (1966) 53 D.L.R. (2d) 187.
[55] R.S.C. 1952, c. 325.
[56] (1965) 50 D.L.R. (2d) 444.
[57] 1960-61 (Can.) c. 35.

CENTRAL AFRICAN REPUBLIC

ACT No. 65-57 OF 3 JUNE 1965, TO ESTABLISH A FAMILY BENEFIT SCHEME FOR WAGE-EARNING EMPLOYEES IN THE CENTRAL AFRICAN REPUBLIC[1]

Part I. Scope

1. A family benefit scheme is hereby established for all workers covered by the Labour Code.

Family benefits shall be paid to every wage earner, whether a citizen of the Central African Republic or not, resident in the Republic and engaged in employment for the account of a private individual or public or private body corporate and having one or more dependent children resident in the Central African Republic.

Save in cases of *force majeure* that have been duly certified in the manner described in the last enumeration in clause 1 of section 9 below, every such wage earner must have been engaged in such employment for the account of one or more employers for at least six consecutive months.

The managing committee of the Central African Social Security Office shall be empowered to make the necessary conventions with the accredited representatives of the institutions providing family benefit in other States to permit of the reciprocal guarantee of the rights of workers required to carry on their activities or reside in one or more of the States covered by the said conventions.

This Act shall not apply to officials or employees working under contract under the collective agreement of 18 March 1959 whose family allowances are paid out of the state budget.

Part II. Benefits

2. The family benefits provided under the scheme instituted by this Act are as follows:

(1) assistance allowances for young parents;

(2) prenatal allowances;

(3) family allowances proper;

(4) benefits in kind;

(5) housing allowances.

On her confinement a woman wage earner shall also be entitled to a daily pecuniary benefit under the Labour Code.

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[1] *Journal officiel de la République centrafricaine*, No. 13, of 1 July 1965. A translation of the Act into English has been published by the International Labour Office as *Legislative Series* 1965 — C.A.R.1.

ACT No. 65-70, OF 3 JUNE 1965, ON NAMES, DOMICILE, AND ABSENCE

Chapter I

NAMES

Art. 1. Everyone shall have a name and one or more first names. First names shall be selected from among those that are usual in the country.

Art. 2. A legitimate child or an illegitimate child who has been recognized by his father shall have a name chosen by his parents, to which the name of his father may be added.

An illegitimate child who has been recognized by his mother, or a child who has been repudiated by his father, shall take the name of one of his ascendants.

Art. 3. A child of unknown parents shall have the name and first names given him on his birth certificate by the Registrar of Births, Deaths and Marriages.

The family name shall be chosen from among those that are usual in the region, and the first names as indicated in article 1 above.

Art. 4. A wife shall have her husband's name for the duration of the marriage.

She shall retain this right after the termination of the marriage unless it was dissolved by divorce or she has remarried.

Art. 5. An adopted child shall take the name of the person adopting him in the case of legitimation by adoption; in the case of simple adoption, the name of the adopting person shall be added to the adopted child's name.

Art. 6. The name and first names appearing on the child's birth certificate may, for legitimate

reasons, be modified or changed by a judgement of the *Tribunal de Grande Instance* (high court) or the *Tribunal d'Instance* (regular court) at the request of the person concerned or, during his minority, at the request of his legal representative in accordance with procedure laid down in article 99 of the Act on Records of Births, Deaths and Marriages.

The decision shall be registered in accordance with article 102 of the same Act.

Names and first names may also be added by a decision of the Court.

Art. 7. No change of name or first name shall prejudice the rights previously acquired by a third person in good faith.

Chapter II

DOMICILE

Art. 8. A person's domicile shall be the place in which he has established the principal centre of his moral, family and financial interests, with the intention of living there permanently.

Art. 9. The domicile of a married woman shall be that of her husband, unless she is legally or judicially authorized to live apart from him.

Art. 10. The domicile of an unemancipated minor shall be that of his father and mother or of his guardian.

The domicile of a person under legal disability shall be that of his guardian.

Art. 11. Persons on whom a penalty involving deprivation of liberty has been imposed shall be considered to have retained their previous domicile.

Art. 12. A person's domicile shall continue to be in the place where it has been established until it is established elsewhere.

...

Chapter III

ABSENCE

Art. 17. Absence is the state of a person who has ceased to appear in his place of domicile or residence and who, in the absence of news, may no longer be alive.

Art. 18. Absence shall be presumed when no news has been received for more than a year.

Art. 19. Until the expiration of this period, the property of individuals who are absent shall be administered, with due attention to their interests, by a person designated by the *conseil de famille* (family council).

Art. 20. At the end of the period specified in article 18 above, other measures may be taken to protect the property of the person whose absence is presumed at the request of the interested parties or of the Public Prosecutor's Office. These measures, which shall consist in the appointment of temporary administrators, shall be confined to protective and administrative acts.

...

ACT No. 65-71 OF 3 JUNE 1965 CONCERNING THE BINDING FORCE OF LEGISLATIVE ACTS, ADMINISTRATIVE ACTS AND TREATIES, CONFLICT OF LAWS IN POINT OF TIME, THE STATUS OF ALIENS, AND THE APPLICATION OF LAWS [2]

TITLE I

THE BINDING FORCE OF LEGISLATIVE ACTS, ADMINISTRATIVE ACTS AND TREATIES

Chapter I

LEGISLATIVE ACTS

Art. 1. Legislative acts shall take effect as law by virtue of their promulgation in the manner prescribed by the Constitution.

They shall bear the date of the day of their promulgation.

Art. 2. Legislative acts shall be published by insertion in the *Journal officiel.*

Art. 3. Legislative acts shall not become binding throughout the country until one clear day after the deposit of the *Journal officiel* in the office of the Secretary-General of the Government, which shall be entered in a special register available to any person requesting to see it.

Art. 4. If an emergency is declared by the President of the Republic, the Head of the Executive Branch, legislative acts shall, without prejudice to publication in the *Journal officiel,* become binding throughout the territory of the Republic as soon as they have been posted on the notice board of administrative acts in the office of the President of the Republic.

Art. 5. Legislative acts, excluding those of exclusively territorial application, shall become binding for nationals of the Central African Republic domiciled or resident abroad eight clear days after the deposit of the *Journal officiel* at the embassy or consulate, which shall be entered in a special register available to any person requesting to see it.

...

[2] *Journal officiel de la République centrafricaine,* No. 13, 1 July 1965.

Chapter II

ADMINISTRATIVE ACTS

Art. 10. Decrees shall be published by insertion in the *Journal officiel.*

Decrees shall be binding only as provided in articles 3, 4 and 5.

...

Chapter III

TREATIES

Art. 16. All treaties shall take effect as law upon completion of the formalities prescribed by the Constitution.

They shall become binding only by publication in the *Journal officiel.*

...

Art. 22. The courts shall interpret treaties in the matters within their competence.

TITLE II

Sole chapter

CONFLICTS OF LAWS IN POINT OF TIME

Art. 23. Legislative acts shall not have retrospective effect; they shall lay down rules for the future only.

A new legislative act shall not alter the conditions for the creation of a legal situation previously created or the conditions for the extinction of a legal situation previously extinguished. Furthermore, it shall not alter the consequences produced by a legal situation at a time when a previous legislative act was in force.

Art. 24. A legislative act may not have retrospective effect unless the legislature by express words declares such to be its intention.

Nevertheless, declaratory legislative acts shall have retrospective effect. A legislative act may not be deemed declaratory unless there is a clear indication in its provisions that such was the intention of the legislature.

Except where otherwise provided, declaratory legislative acts may not by retrospection derogate from the effects of a decision which is *res judicata* or of a compromise of an action which is made a rule of court.

Art. 25. Were a judicial decision creates a new situation and is not declaratory of the law, it shall be subject to the law in force on the day on which it is rendered.

Art. 26. Judicial evidence shall be subject to the law in force on the day on which the final decision is rendered.

Nevertheless, pre-established evidence and presumptions of law shall be governed by the law which governs the facts or the acts in the law to be proved.

The procedure for the submission of evidence shall be governed by the law in force on the day on which such evidence is submitted.

Art. 27. Were compliance with the conditions for the creation or the extinction of a legal situation may or should take place at different periods of time, new legislative acts shall apply only to those conditions for which compliance is not yet final. They may require new conditions for the formation or the extinction of such a situation.

Art. 28. Legislative acts which extend periods of limitation shall apply immediately to periods which are running; legislative acts which reduce periods of limitation shall do likewise, provided that the new periods of limitation shall run only from the commencement of the new legislative act. Nevertheless, the periods of limitation laid down by previous legislative acts shall be retained if they are to expire before the new periods of limitation commence.

Art. 29. In the absence of an express or implied exception made by the legislature, new legislative acts which determine the consequences of non-contractual legal situations shall apply immediately to situations created before their entry into force.

Art. 30. In the absence of an express or implied exception made by the legislature, previous legislative acts shall continue to govern the consequences of existing contracts.

In the absence of an express clause providing for retrospection in accordance with article 24, first paragraph, the application of a new legislative act to existing contracts cannot alter the consequences produced by a contract under the previous law.

TITLE III

THE STATUS OF ALIENS, TERRITORIAL CONFLICT OF LAWS, THE COMPETENCE OF GOVERNMENTS AND COURTS

Chapter I

THE STATUS OF ALIENS

Section 1. Status of individuals

Art. 31. An alien shall enjoy in the Central African Republic the same rights, with the exception of political rights and rights expressly denied to him by law, as nationals, subject to treaty provisions.

The exercise of a right may, however, be made conditional upon reciprocity.

Art. 32. An alien, even if not a resident of the Central African Republic, may be sued in the courts of the Central African Republic in respect of obligations into which he has entered in the Central African Republic or a foreign country with a national of the Central African Republic.

Art. 33. A national of the Central African Republic may be sued in a court of the Central African Republic in respect of obligations into which he has entered abroad, even with an alien.

Art. 34. An alien cannot have a domicile in the Central African Republic under the law of the Central African Republic unless he complies with the obligations imposed by the laws concerning the stay of aliens in the Central African Republic.

Section 2. Status of legal entities

Art. 35. A legal entity the head office of which is in the Central African Republic shall enjoy all the rights of a national of the Central African Republic compatible with its nature and purpose.

The rights of such a legal entity where its management is placed, in any way whatsoever, under foreign control or under the control of organizations themselves under foreign control and the rights of all legal entities doing business in the Central African Republic shall be stated precisely in special provisions.

Art. 36. Legal personality granted to companies by the law of the country of their formation shall be recognized as of right in the Central African Republic with the consequence laid down by that law, provided that those consequences are not contrary to public policy (*ordre public*) or to the provisions of the preceding article.

Such companies may do business in the Central African Republic, unless otherwise provided by decree.

Art. 37. The application of the provisions of this section shall be without prejudice to treaties concluded by the Central African Republic.

Chapter II

Territorial Conflict of Laws

Art. 38. The provisions of this chapter shall determine the domain of the laws of the Central African Republic and of foreign laws.

Where the foreign law normally applicable does not consider that it is competent, the foreign law which it designates and which accepts this competence or, if there is none, the law of the Central African Republic shall apply.

Art. 39. Police and public safety laws shall be binding on all inhabitants.

Art. 40. The status and capacity of persons shall remain subject to their *lex patriae.*

Nevertheless, stateless persons domiciled in the Central African Republic shall be governed by the law of the Central African Republic.

Art. 41. Property shall be governed by the *lex loci rei sitae.*

In particular, immovables situated in the Central African Republic shall be governed by the law of the Central African Republic.

Art. 42. With regard to contractual and quasi-contractual obligations and with regard to contractual matrimonial property systems, the court before which the matter is brought shall determine and apply the law which the parties have agreed shall govern.

With regard to delictual and quasi-delictual obligations, the *lex loci delicti* or the *lex loci quasi-delicti* shall apply exclusively.

Art. 43. Succession to immovables shall obey the *lex loci rei sitae.* Succession to movables shall follow the *lex domicilii* of the deceased.

Art. 44. Any act in the law which complies with the formalities prescribed in the place where it is made shall be valid.

Art. 45. The application of the provisions of this chapter shall be without prejudice to previously created legal situations.

Title IV

Sole chapter

Application of Laws

Art. 46. A judge may not, on any pretext whatsoever, refuse to judge a dispute submitted to him. In cases where the law is silent, inadequate or obscure, he may base his ruling on the general principles of law and, where appropriate, on the customs and traditions of the parties to the dispute, provided that those customs and traditions are certain, have been fully proved, and are not against public policy (*ordre public*) or *contra bonos mores.*

Art. 47. Persons may not derogate by agreement among themselves from the laws concerning public policy and morality.

...

CEYLON

NOTE [1]

I. Legislation

(A) Constitutional Provisions

Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965

This is an Act to impose civic disabilities on certain persons against whom allegations of bribery were held by a Commission of Inquiry to have been proved. Provisions in this Act which are supplementary to or inconsistent with the Constitution are deemed to be an amendment of the Constitution.

(B) Judicial Procedure

1. *Bribery (Amendment) Act No. 2 of 1965*

The former procedure of trial by Bribery Tribunals is abolished and persons accused of bribery have now to face a trial on indictment before the regular Criminal Courts.

2. *Muslim Marriage and Divorce (Amendment) Act No. 1 of 1965*

This Act is consequential upon the Supreme Court decision which held that *quazis* who granted divorces and adjudicated upon claims for maintenance among members of the Muslim community were "judicial officers" under the Constitution. It now provides for appointment by the Judicial Service Commission.

(C) Economic Rights

Ceylon Petroleum (Foreign Claims) Compensation Act No. 19 of 1965

This is an Act to give effect to Agreements entered into between the Government and certain foreign-owned petroleum companies as regards the compensation to be paid to such companies for certain assets which were taken over by the Ceylon Petroleum Corporation.

[1] Note furnished by the Government of Ceylon.

II. Judicial Decisions

(A) Constitutional

Liyanage v. *The Queen* 68 *New Law Reports* 265

The joint effect of the Ceylon (Constitution) Order-in-Council of 1946 and the Ceylon Independence Act of 1947 is that the Parliament of Ceylon possesses the full legislative powers of a sovereign independent State. Those powers, however, as in the case of all countries with written Constitutions, must be exercised in accordance with the terms of the Constitution from which the power derives.

Although no express mention is made in the Constitution of vesting in the judicature the judicial power which it already had and was wielding in its daily process under the Courts Ordinance, the provisions of Part VI of the Constitution manifest an intention to secure in the judiciary a freedom from political legislative and executive control. The Constitution's silence as to the vesting of judicial power is consistent with its remaining, where it had lain for more than a century, in the hands of the judicature. It is not consistent with any intention that henceforth it should pass to, or be shared by, the executive or the legislature. Accordingly, there exists a separate power in the judicature which under the Constitution as its stands cannot be usurped or infringed by the executive or the legislature, and in so far as any Act passed by Parliament without recourse to Section 29(4) of the Constitution purports to usurp of infringe the judicial power it is *ultra vires*.

(B) Right to a Fair Trial

1. *Yohanis Singho* v. *The Queen* 67 *New Law Reports* 8

The accused-appellant was charged with murder and his defence was that of *alibi*. The prosecution relied on the evidence of a witness who stated that he saw the accused stabbing the deceased. The accused called as his witness a man, S, who stated that, at the time of the offence, the accused was seen at a boutique which was about one-eighth of a mile away from the

scene of the offence. When the trial-judge, in his summing-up, dealt with S's evidence, he omitted altogether to give the jury any direction as to what they were to do if they neither accepted S's evidence as true nor rejected it as untrue. Held, that the omission to direct the jury on the intermediate position where there was neither an acceptance nor a rejection of the *alibi* was a non-direction on a necessary point and constituted a misdirection.

2. *The Queen* v. *Ekmon* 67 *New Law Reports 49*

Where, in a trial before the Supreme Court, the verdict of the jury is clear and unmistakable, the presiding Judge has no power to put questions to the jury. The power to ask questions conferred by section 248 (1) of the Criminal Procedure Code is limited to such questions as are necessary to ascertain what the verdict of the jury is. It was held that the trial-judge acted wrongly (*a*) in refusing to take the verdict returned by the jury after the first summing-up, (*b*) in questioning them when their verdict was unmistakable, (*c*) in giving them further directions on one aspect of the case alone after the summing-up, (*d*) in not taking the verdict on all counts once he had directed the jury to reconsider their verdict, (*e*) in expressly telling them what their verdict should be on the charge of murder.

3. *Khan* v. *Ariyadasa* 67 *New Law Reports 145*

Charges based on the existence of an unlawful assembly may be joined together at one trial with charges in respect of offences committed by the accused acting in furtherance of a common intention within the meaning of section 32 of the Penal Code, if the offences are alleged to have been committed in the course of one and the same transaction within the meaning of Section 180 (1) of the Criminal Procedure Code. The words " more offences than one are committed " in Section 180 (1) of the Criminal Procedure Code must mean and must be understood as meaning more offences than one are alleged to have been committed.

4. *Ariyadasa* v. *The Queen* 68 *New Law Reports 66*

Where in a prosecution for murder, the accused gives evidence without seeking to bring himself within the benefit of a general or special exception in the Penal Code, the burden of proof does not shift on to him at any stage. In such a case, if the Judge, in his summing-up, puts the issue in the case as one of belief between the evidence of a prosecution witness on the one hand and that of the accused on the other, he would be placing on the accused a burden which the latter is not obliged in law to carry. The accused is entitled to be acquitted even if his evidence, though not believed, is such that it causes the jury to entertain a reasonable doubt in regard to his guilt.

5. *The Queen* v. *Sinnatamby* 68 *New Law Reports 193*

(i) On the day before a trial before the Supreme Court began, newspapers published prejudicial reports of an earlier abortive trial of the accused. The jury were, however, sufficiently directed, in the summing-up of the Judge to keep the newspaper reports out of their consideration in arriving at their verdict. Held, that the trial was not vitiated by the publication of the newspaper reports.

(ii) In a prosecution for murder, medical evidence as to the unsound mental condition of the accused was elicited by the Judge for the first time after the accused himself had given evidence and been closely questioned by the Judge in such a way as to lead the jury into the belief that his evidence was totally unworthy of credit. The Crown suggested no motive of any kind for the alleged murder.

Held, that the medical evidence should have been given before the accused was called to give evidence.

Held further, that, even though the defence was a total denial of the acts which caused the death of the deceased, the Judge was justified in putting the question of insanity to the jury for them to consider in the event of their holding that it was the accused who struck the fatal blow.

6. *Liyanage & others* v. *The Queen* 68 *New Law Reports 265*

The Criminal Law (Special Provisions) Act No. 1 of 1962 and the Criminal Law Act No. 31 of 1962 were *ultra vires* and invalid in so far as they constituted a grave and deliberate interference with the judicial power of the judicature. Although criminal legislation which can be described as *ad hominem* and *ex post facto* may not always amount to an interference with the functions of the judiciary, in the present case there was no doubt that there was such interference and that it was not only the likely but the intended effect of the impugned Acts. The Acts being invalid, the convictions of the accused were quashed.

CHILE

NOTE [1]

Act No. 16094 of 5 January 1965, Diario Oficial No. 26032 of 6 January 1965, prescribes the methods and limitations applicable to electoral publicity with a view to preventing excesses prejudicial to the community.

Act No. 16270 of 18 June 1965, Diario Oficial No. 26167 of 19 June 1965, replaces article 92 of Labour Act No. 16250 with the object of preventing cases of unjustified dismissal.

Act No. 16282 of 26 July 1965, Diario Oficial No. 26199 of 28 July 1965, contains provisions for the care of victims of earthquakes or natural disasters and adds to article 81 of the Civil Code a new section which lays down a procedure for requesting a declaration of the presumed death of persons still missing one year after an earthquake.

Act No. 16346 of 8 October 1965, Diario Oficial No. 26269 of 20 October 1965, contains adoption laws conferring the civil status of legitimate child, with all its rights and obligations, upon the children of adoptive parents who legitimize them.

Act No. 16311 of 11 September 1965, Diario Oficial No. 26252 of 29 September 1965, amends the Labour Code as follows:

Article 1. The following paragraphs are added to article 136 of the Labour Code:

"The prohibition referred to in article 48 of this Code shall apply to women salaried employees in private employment.

"That prohibition shall also apply to minor children under the age of eighteen who have the status of salaried employees in private employment."

Article 2. The following article 136 *bis* is added after article 136:

"Article 136 *bis*. The prohibition set forth in article 49 relating to underground work shall also apply to salaried women employees in private employment. Nevertheless, the prohibition shall not apply to the following:

"(*a*) Women salaried employees holding administrative or technical posts of responsibility;

"(*b*) Women salaried employees employed in health or social welfare services;

"(*c*) Women who undertake practical work in the underground part of a mine during a course of study and for technical training purposes;

"(*d*) Women salaried employees who, in the exercise of their profession, have to descend occasionally to the underground part of a mine."

Article 3. The fines prescribed in articles 90 and 178 of the Labour Code shall be the equivalent of one to three times the minimum monthly salary rate (*a*) of the Department of Santiago; in the event of a repetition of the offence, the fine shall be doubled.

Act No. 16317 of 14 September 1965, Diario Oficial No. 26252 of 29 September 1965, amends articles 162 and 315 of the Labour Code.

Article 1. Article 162 of the Labour Code is replaced by the following:

"Article 162. Salaried employees in private employment who are mothers shall have the same rights as are laid down for women wage-earning employees in article 318 of this Code; the breaks to which that article refers shall be two periods of one half hour each."

Article 2. The words "or women salaried employees" are added after the words "women wage-earning employees" in the first paragraph of article 315 of the Labour Code.

Act No. 16319 of 14 September 1965, Diario Oficial No. 26272 of 23 October 1965, establishes the Chilean Nuclear Energy Commission.

Act No. 16386 of 3 December 1965, Diario Oficial No. 26311 of 10 December 1965, grants the status of salaried employees for all legal purposes to persons who work in a professional capacity as mechanics whose functions are included under that activity in the International Standard Classification of Occupations of the International Labour Office.

Act No. 16391 of 14 December 1965, Diario Oficial No. 26316 of 16 December 1965, estab-

[1] Note furnished by Mr. Julio Arriagada Augier, former Under-Secretary for Public Education, government-appointed correspondent of the *Yearbook on Human Rights*.

lishes the Ministry of Housing and Urban Affairs. The Ministry will be responsible for national housing policy, for co-ordinating the activities of institutions which are linked through it with the Government and, in particular, for preparing rural and urban housing plans, and plans for community facilities and urban development. The Ministry will plan, execute and supervise all matters relating to housing, urban development and building productivity.

Act No. 16392 of 14 December 1965, Diario Oficial No. 26316 of 16 December 1965, establishes local standards governing building, urbanization and the issuance of property deeds.

Decrees

No. 443 of 28 June 1965 by the Ministry of Foreign Affairs, *Diario Oficial* No. 26217 of 18 August 1965, establishes the National Cultural Commission, an advisory body associated with the Government.

No. 555 of 7 August 1965 by the Ministry of Foreign Affairs, *Diario Oficial* No. 26232 of 4 September 1965, promulgates the Convention banning nuclear tests.

No. 2512 of 9 September 1965 by the Ministry of Justice, *Diario Oficial* No. 26241 of 15 September 1965, amends the Decree regulating the granting of conditional release by expanding the discretionary powers of the half-yearly Prison Visiting Committee.

No. 554 of 7 August 1965 by the Ministry of Foreign Affairs, *Diario Oficial* No. 26245 of 21 September 1965, promulgates a draft agreement approving amendments to Articles 23, 27 and 61 of the Charter of the United Nations (General Assembly resolution 1991 (XVIII) entitled "Question of equitable representation on the Security Council and the Economic and Social Council").

No. 651 of 30 September 1965 by the Ministry of Foreign Affairs, *Diario Oficial* No. 26309 of 7 December 1965, amends Decree No. 521 of 30 October 1953 (Immigration Regulations) with a view to applying a modern immigration policy for qualified manpower in accordance with agreements adopted at international conferences and the programmes adopted by the Government.

No. 26895 of 22 November 1965 by the Ministry of Public Education, *Diario Oficial* No. 26312 of 11 December 1965, contains a revised text of Decree No. 10048 of 1954 concerning the Regulations of the National Education Fund of the Office of the Superintendent of Public Education which increases the income of that Office.

No. 3140 of 19 November 1965 by the Ministry of Justice, *Diario Oficial* No. 26314 of 14 December 1965, contains regulations governing basic standards for the application of a national policy for penal institutions. It states that the guiding principle of any penal activity is the assumption that persons deprived of liberty have a public law relationship with the State; therefore, apart from the rights which are lost or restricted by reason of imprisonment or conviction, the legal status of such persons is identical with that of free citizens. Consequently, the rights of such persons as human beings, including the right to work, to social welfare, to education, to medical care, as well as family rights, must be fully respected. The regulations laid down in the Decree must be applied impartially; there may be no differences in the treatment by reason of sex, religion, political or ideological opinion, at any level, wealth, birth or any other consideration.

No. 27952 of 7 December 1965 by the Ministry of Education, *Diario Oficial* No. 26319 of 20 December 1965, amends the educational structure so as to achieve a better and more harmonious development of all aspects of the individual personality, to train persons for their working life and enable them to participate intelligently in the cultural, social and economic development of the country. The amendments cover:

(*a*) Primary education;

(*b*) General basic education;

(*c*) Secondary education, whether humanities and sciences or technical and vocational;

(*d*) Higher education.

No. 27953 of 7 December 1965 by the Ministry of Public Education, *Diario Oficial* No. 26319 of 20 December 1965, establishes a seventh year of general basic education in accordance with the provisions of Decree No. 27952.

CHINA

INFORMATION CONCERNING THE MEASURES TAKEN BY THE GOVERNMENT OF THE REPUBLIC OF CHINA FOR THE PROTECTION OF HUMAN RIGHTS IN ACCORDANCE WITH THE UNIVERSAL DECLARATION OF HUMAN RIGHTS [1]

Detailed information on the measures taken by the Government of the Republic of China for the protection of human rights in accordance with the Universal Declaration of Human Rights was supplied by the Chinese Government in three documents, namely, "Notes on Developments and Progress in the Field of Human Rights and Personal Freedoms in the Republic of China", "Information Concerning the Measures taken by the Government of the Republic of China for the Protection of Human Rights", and "Information Concerning the Measures taken by the Government of the Republic of China for the Protection of Human Rights in accordance with the Universal Declaration of Human Rights", which were sent to the United Nations in 1963, 1964 and 1965 respectively. In the current year, the Ministry of Justice continued to implement the measures for the protection of human rights in accordance with the established national policy and the related laws and regulations. In the Ministry's administrative programme, special emphasis was given to the following measures: protection of people's rights and interests, ensuring the proper conduct of trials, facilitating legal proceedings, strict enforcement of statutes on trial and detention, and ensuring the proper functioning of the public defender and the legal guidance and legal aid systems. These measures were instituted for the purpose of protecting human rights and upholding justice. Owing to the special attention paid to the measures for the protection of human rights in recent years, the country now has reasonably adequate legislation in that sector. The only new law enacted during the period under review was the Statute Governing the Release of Persons Accused of Criminal Offences on Bail or Bond or into the Custody of Others, which was promulgated on 1 July 1965 (see Annex). This Statute not only helps to eliminate some of the difficulties encountered by persons accused of criminal offences in posting bonds, but also serves as an effective means of protecting the human rights of accused persons.

[1] Information furnished by the Government of the Republic of China.

Annex

STATUTE GOVERNING THE RELEASE OF PERSONS ACCUSED OF CRIMINAL OFFENCES ON BAIL OR BOND OR INTO THE CUSTODY OF OTHERS (PROMULGATED BY THE MINISTRY OF JUSTICE OF THE REPUBLIC OF CHINA ON 1 JULY 1965)

Art. I. Release of a person accused of a criminal offence on bail or bond or into the custody of another person, unless otherwise provided for by law, shall be effected according to the provisions of this Statute.

Art. II. If the court decides that an accused person may be released on bail, it shall issue an order requiring him to provide an appropriate sum of money as surety, taking into account the financial position and family status of the accused and the nature of the offence. Unless the accused is willing to provide the specified surety or a third party is permitted to supply it, a written bond shall be required which must be signed by a reliable person or a business establishment within the district of the court before the accused can be released. If the court decides that the accused may be released into custody of another person, a certificate of custody shall be provided by a representative of the accused or by any other suitable person within the district of the court, who shall act as his custodian. The bail or bond form and the certificate of custody form shall be available at courts of all instances free of charge (see appendixes I and II).

Art. III. If the court decides that an accused person may be released on bail or bond or into the custody of another person, any representative or relative of the accused waiting outside the court during investigation, or inside the court during trial, may be entrusted with the duty of finding a guarantor or a custodian and completing the bonding process for the accused. If any one of the above-mentioned persons can himself act as the guarantor or the custodian, or if a lawyer can act as the custodian for the accused, he may complete the bonding process for the accused immediately in the courtroom, providing that he has brought with him his identification card, business permit and other necessary certificates to be submitted to the court for inspection. The clerk shall bring the bail or bond form and the certificate of custody form to the courtroom before the trial for use in such circumstances.

Art. IV. If the accused cannot find anyone to act as his guarantor or custodian and to complete the bonding process for his release immediately, he may be permitted to use the telephone or any other means of communication to request his friends or relatives to find someone within the district of the court to act as his guarantor or custodian. The said person must bring his identification card, business permit, tax returns and other necessary certificates and apply to the competent court clerk in order to complete the bonding process. The above-mentioned provision shall apply *mutatis mutandis* to a detained accused person when the court has ruled that he is to be released on bail or bond or into the custody of another person. If an accused person wishes to leave the court premises to find a guarantor or custodian, the court shall provide him with a police escort during such time. No restraint shall be placed on the person of the accused unless there is reason to fear that he may escape. Where an accused person fails to find a guarantor or custodian on the day when his release is ordered by the court, the competent court clerk or the accused himself may inform the members of his family, his relatives or friends in writing, requesting them to find a guarantor or custodian and to complete the bonding process for his release.

Art. V. If an accused person fails to find a guarantor to provide the bail or bond for the specified amount, in addition to the provision stated in the third paragraph of the preceding article, which shall apply, the procurator or the judge of the case may order a reduction of the original amount of cash security and direct the accused to continue to look for a guarantor, or allow two business establishments whose combined capitals exceed the amount of the cash security to act as his guarantors or commit the accused into the custody of yet another person.

Art. VI. If an accused person fails to find a guarantor in the urban district, he may be permitted to look for one in the rural district. The competent procurator or judge shall communicate with the police authority of the rural district concerned, by telephone or in writing, requesting it to supervise the bonding process. The accused shall remain under detention until the bonding process is completed.

Art. VII. Any business establishment within the district of the court acting as a guarantor of an accused person, must have a capital exceeding the specified amount of the cash security. However, if it can be proved that the amount of its actual assets exceeds that of its registered capital and also that of the cash security required, it may qualify to act as the guarantor. If a guarantor is not a business establishment but a private person of means, he must prove that the amount of his total assets exceeds that of the cash security required. An accused person may be exempted from furnishing a written bond if he provides the said security in the form of cash. The security may also be furnished in the form of valuables, which shall be assessed at the current market value. When an accused person is released into the custody of another person, any person who acts as his representative, his counsel for defence or his authorized agent may act as his custodian. In addition, any lineal ascendant and relative of the accused or any person with secure employment and good reputation within the district of the court who exercises a certain amount of control or influence over the accused may also act as his guarantor.

Art. VIII. The court shall maintain a card file on persons and business establishments that have acted as guarantors for accused persons. Each card shall list the name of the person or that of the business establishment, its capital assets and the cash security required in each case. The court policeman shall enter the details concerning the person or the business establishment on the same card if the said person or business establishment has acted as guarantor more than once. If the said person or business establishment is to act as guarantor in other cases, the card shall be submitted to the procurator or the judge for consideration. (For the form of the card, see Appendix III.)

Art. IX. If an accused person succeeds in finding a guarantor or custodian after the office hours of the court or on an official holiday, the competent court official shall ask the procurator or the judge on duty to examine and approve the application for suspension of detention.

Art. X. The court official entrusted with the duty of assisting an accused person in completing the bonding process must not wilfully create any difficulty or cause any delay, demand bribes, accept entertainment or gifts, or take the accused to any other place for any activity other than the posting of the bond. Any violation shall be subject to severe punishment.

Art. XI. This Statute shall come into effect from the day of its promulgation.

Appendix I

BAIL OR BOND IN CRIMINAL PROCEEDINGS

The Guarantor			*The Accused*
Business Establishment		*Private Person*	
Name of the establishment	Name of the person in charge	Name	Name
Capital assets (NTC$)	Sex	Sex	Sex
Other assets	Age	Age	Age
1. Real estate (number of rooms valued at NTC$)	Native of (Province, *Hsien*)	Native of (Province, *Hsien*)	Profession
2. Land (number of *Ping* valued at NTC$)	Identification card number	Occupation	Case number
3. Others	Relationship with the accused	Identification card number	Description of the case
Business permit (registered number)	1. Relative	Relationship with the accused	Address
Address	2. Friend	1. Relative	
	Address	2. Friend	
		Total assets	
		1. Real estate (number of rooms valued at NTC$)	
		2. Land (number of *Ping* valued at NTC$)	
		3. Others	
		Address	

(Issued without charge)

To the Procurator of the Criminal Chamber of ..... Court:

I, the undersigned, acting as the guarantor for the accused ....., am willing to assume the following obligations:

1. To produce the accused whenever he is summoned;
2. To assume responsibility for the cash security specified in the bond (NTC$);
3. To guarantee the limitation on residence imposed on the accused by the Court; and
4. To assume responsibility for receiving papers served on him.

SIGNED

[Seal of person or of the business establishment]

Remarks

The accused authorizes his guarantor to receive papers served on him. [Seal]

This bond is verified by ..... [Seal]

Remarks

Done on ..... Day ..... Month ..... Year of the Republic of China.

Appendix II

CERTIFICATE OF CUSTODY IN CRIMINAL PROCEEDINGS

The Custodian	The Accused
Name	Name
Sex	Sex

Native of Province, *Hsien* Age

Profession Case number

Identification card number Description of the case

Relationship with the accused: Address

1. Relative

2. Friend

Address

To the Procurator of the Criminal Chamber of ..... Court:

I, the undersigned, acting as the custodian of the accused ....., am willing to assume the following obligations:

1. To produce the accused whenever he is summoned; and

2. To assume responsibility for receiving papers served on him.

SIGNED
[Seal]

Remarks

The accused authorizes his custodian to receive papers served on him. [Seal]

This certificate is verified by ..... [Seal]

Remarks

Done on ..... Day ..... Month ..... Year of the Republic of China.

Appendix III

Please use the four-cornered numerals words identification system

Filing card on guarantors in criminal proceedings of the District Court or the Procurator's Office of ....., Taiwan

Name of the guarantor

Courtesy name

Alias

Sex

Identification card number

Age

Native of .....

Profession

Name of business establishment

Capital assets

Kind of business

Address

Present .....

Permanent .....

This card is made by ..... on .....

(*Reverse Side*)

Record of the Guarantor

The Accused, Sex, Age, Year, Case number, Description of the case, Amount of cash security, Date of bond posting, Date of withdrawal

First time

Second time

Third time

Fourth time

Procurator or Judge ..... [Seal]

Remarks

COLOMBIA

ACT OF 10 SEPTEMBER 1965[1]

Art. 1. A building, to be known as the "Alfonso Barberena House of the People", shall be constructed by the nation at Cali, capital of the department of Valle del Cauca. The building shall comprise:

(*a*) A room to house a public library;

(*b*) An auditorium for lectures on world culture;

(*c*) Large rooms suitable for meetings of the governing bodies of the housing associations of Cali and for meetings and assemblies of the various trade-union organizations which do not have premises of their own for such purposes;

(*d*) A people's theatre with a minimum capacity of 1,000 seats;

(*e*) A room for evening classes for poor children and another to serve as a trade-union training school.

The community development and community action councils, and sports leagues which do not have premises of their own for meetings, may use the premises of the "House of the People", subject to prior authorization by the mayor of Cali.

...

Art. 5. The "House of the People", to which this Act relates may not be used for meetings of governing bodies, committees or organizations of a partisan nature and may only be used for the purposes specified in this Act.

...

[1] *Diario Oficial,* No. 31752 of 15 September 1965.

CONGO (BRAZZAVILLE)

DECREE No. 65-147 OF 25 MAY 1965 CONCERNING THE ESTABLISHMENT OF THE MOVEMENT CALLED "ACTION FOR RURAL RENEWAL" [1]

Art. 1. A movement called "Action for Rural Renewal" is hereby established under the auspices of the Party. [2] The Ministry of Agriculture and the State Department for Youth and Sport shall bear technical and administrative responsibility for it, and the State Department for National Defence shall be responsible for the military aspects of its activity.

Art. 2. Action for Rural Renewal is a progressive movement, the purpose of which is to integrate young people into national production and defence.

To this end, young people shall be given political, economic, technical and military instruction in training centres.

Art. 3. Young people from eighteen to twenty-three years of age who are not in steady employment and who fulfil the Army's physical fitness requirements may join Action for Rural Renewal.

Conditions of recruitment shall be determined by an order of the State Department for Youth and Sport.

Art. 4. Members of Action for Rural Renewal may in no case be regarded as or assimilated to, civil servants.

They shall become independent co-operative producers, after receiving, over a period of six months, the necessary basic training equipping them to take part in national production and defence.

Art. 5. At the end of the training period referred to in the preceding article, members of Action for Rural Renewal shall receive from the State, at the time that their membership is confirmed, moral encouragement and a financial grant which they shall repay in the first years of production.

They shall be responsible for promoting the technical, political, economic and social advancement of the local inhabitants within a radius of twenty-five kilometres from their co-operative village.

Art. 6. The managing and co-ordinating body of Action for Rural Renewal shall be a committee presided over by the Minister of Agriculture, assisted by the State Secretary for Youth and Sport, and composed of a secretary for political education, a secretary for technical education, and a secretary for military education.

Art. 7. Action for Rural Renewal shall comprise a National Training Centre and, if the situation warrants it, Regional Centres and co-operative villages.

Section 1. The National Training Centre and the Regional Centres

Art. 8. These Centres shall be under the supervision of the State Department for Youth and Sport.

Art. 9. The community service training school for Congolese youth shall henceforward be the National Training Centre for Action for Rural Renewal.

The Centre shall provide:

(*a*) General training to give young people the fullest possible instruction in co-operative, civic, political and military matters;

(*b*) Vocational training to enable young people to take up the occupation of farmer and other occupations necessary for the proper functioning of co-operative villages.

Art. 10. The National Training Centre shall be managed by a Director, who shall be assisted by experts in political affairs, farming techniques, construction techniques and military operations.

These experts shall be responsible for the training and education of young people.

Art. 11. Regional Centres, the organization of which shall be determined by an order of the State Secretary for Youth and Sport, may later be established in the agricultural regions.

Section 2. Co-operative Villages

Art. 12. The co-operative villages shall be the responsibility of the Minister of Agriculture.

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[1] *Journal officiel de la République du Congo*, No. 11, 1 June 1965.

[2] The party referred to is the single party established by Act No. 25/64 of 20 July 1964 and known as the "Movement National de la Révolution" (National Revolution Movement). For extracts from Act No. 25/64, see *Yearbook on Human Rights for 1964*, pp. 77-79.

Art. 13. At the end of their training period at the National Training Centre, young people shall be voluntarily settled in existing co-operative villages or in villages to be built in different regions of the Republic according to the requirements of production.

They shall there engage in the various activities required to increase production and improve the living conditions of the rural population.

...

ACT No. 32-65 OF 12 AUGUST 1965 REPEALING ACT No. 44-61 OF 28 SEPTEMBER 1961 AND ESTABLISHING THE GENERAL PRINCIPLES OF EDUCATIONAL ORGANIZATION [3]

TITLE I

GENERAL PROVISIONS

Art. 1. Every child living in the territory of the Republic of the Congo shall be entitled, without distinction as to sex, race, belief, opinion or property, to an education which shall ensure the full development of his intellectual, artistic, moral and physical aptitudes, and his civic and vocational training.

Art. 2. The organization of education shall be a duty of the State. Such education shall provide every child with training adapted to life and to contemporary social tasks, and shall assist in raising the general level of culture.

Art. 3. School attendance shall be compulsory from six to sixteen years of age.

Education may be given in the home in conditions to be established by decree.

Art. 4. Education shall be free. During the period of compulsory school attendance, school supplies shall also be free.

Art. 5. School work shall be supplemented by extra-curricular and after-school activities.

Where the means permit, the State may also call on the Department of Education, or any other Department, to establish institutions for the advancement of culture and the arts, namely, museums, theatres, a national library. All these institutions may be placed under the authority of a higher council for culture and the arts. Their characteristics and operation shall be determined by decrees of the Council of Ministers.

...

TITLE IV

IMPARTIALITY OF EDUCATION

Art. 10. Education in public establishments shall respect all philosophical or religious doctrines.

These establishments shall be open to all students applying for admission, without distinction as to origin, race or belief.

Religious instruction may be given only outside these establishments and outside regular class hours.

...

[3] *Journal officiel de la République du Congo,* No. 18 of 15 September 1965.

COSTA RICA

LAW AGAINST VAGRANCY, BEGGING AND NEGLECT, ACT No. 3550 OF 1 OCTOBER 1965 [1]

Chapter I

DEFINITIONS

Art. 1. Vagrancy and begging by persons over seventeen years of age and any act by such persons which results in the neglect of a minor under seventeen years of age shall constitute an offence; offenders shall be subject to the observation, treatment and penalties laid down in this Act and its related provisions.

Art. 2. The following shall be deemed to be vagrants:

(*a*) Persons with no visible lawful means of support who are capable of working in useful occupations compatible with their age, sex, status and condition and who do not so work;

(*b*) Persons who habitually frequent bars, saloons, gaming-houses, houses of prostitution or centres of perversion during working hours, and who have no known occupation;

(*c*) Women who cause a public scandal because of their immoral behaviour, or who habitually frequent gaming-houses, houses of prostitution, taverns and other similar places, or who regularly indulge in improper behaviour in disreputable places.

Art. 3. The following shall be deemed to be beggars:

(*a*) Persons who habitually solicit alms in any public place, or who frequent towns and villages soliciting;

(*b*) Persons who exhibit in public, or simulate, diseases or physical defects as a means of obtaining public charity;

(*c*) Old, blind, crippled or handicapped persons who frequent public places soliciting alms from passers-by.

Art. 4. In addition to the minors referred to in articles 15, 17 and 18 of the Minors' Code, the following shall be deemed to be in a state of neglect and shall be subject to the security measures laid down in this Act and in its enforcement provisions:

(*a*) Minors under seventeen years of age who frequent the streets, promenades or parks and importune persons in cinemas, theatres, stadiums or any other places of public entertainment or parking areas;

(*b*) Minors of seventeen years of age, who are physically and mentally capable of attending public schools or colleges and who frequent the streets, parks or public places during the hours that they should normally be at school.

...

Chapter IV

SOCIAL TREATMENT

Art. 19. The Directorate of Social Welfare shall be responsible for the social treatment of the cases referred to in this Act and for its enforcement; such treatment and enforcement shall be governed by the following provisions:

(*a*) If the beggar or vagrant is under fifteen years of age and has not completed his primary schooling, he shall be sent to a public school under the responsibility of his father, guardian or the Directorate of Social Welfare;

(*b*) If a minor who has completed his primary schooling continues to display a tendency or inclination towards vagrancy or begging, he shall be sent to a vocational training or apprenticeship centre for as long as he needs to learn the occupation or trade of his choice. If the minor is recalcitrant or runs away, he shall be interned in one of the guidance centres of the High Council for Social Defence or, if necessary, in an appropriate correctional institution for minors;

(*c*) If the women referred to in article 2 (*c*) above are over seventeen years of age, they shall be assigned appropriate work in their place of detention for the period of their stay;

(*d*) Vagrants over seventeen years of age shall serve their sentences in a penal institution and must do the work assigned to them by the Director;

(*e*) The beggars referred to in article 3 shall be treated as follows:

(1) If they are under seventeen years of age, paragraphs (*a*) and (*b*) of this article shall apply as appropriate;

(2) If they are over seventeen years of age and capable of working, paragraph (*d*) of this article shall apply;

[1] *La Gaceta*, No. 229 of 9 October 1965.

(3) If they are old, blind, handicapped or crippled, they shall be committed to appropriate institutions so that they may be given the necessary care, in accordance with the regulations of the Directorate of Social Welfare;

(4) If they are workers who are unable to find employment, they shall be referred to the Employment Office of the Ministry of Labour and Social Welfare which shall examine their case and find a solution.

Art. 20. The police authorities shall organize a special service for the control and supervision of places where vagrants and beggars normally congregate and shall arrest and bring before the competent judge any person who does not satisfactorily prove that he is lawfully earning his living.

CUBA

NOTE [1]

Act No. 1175/65, Gaceta Oficial of 19 March 1965.

Amends articles 30 and 31 of the Civil Code now in force, establishing the procedure for determining that a child was live-born for all legal purposes, and for pronouncing a person legally deceased.

Resolution 100 of the Ministry of Labour, *Gaceta Oficial* of 12 June 1965.

Establishes that the Review Board will deal with cases of flagrant injustice and may declare the nullity of actions or decisions of the Labour Board or Appeals Boards, with the exceptions specified in the resolution itself.

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[1] Note based upon information furnished by the Government of Cuba and published in the Secretary-General's *Periodic Reports on Human Rights* (E/CN. 4/892) of 30 December 1965.

CYPRUS

NOTE [1]

(A) The Building (Safety Health & Welfare) Regulations, 1965

The regulations were enacted by the House of Representatives on 23 November 1965 and will be implemented at stages during 1966. Their main object is the prevention of accidents in the building industry.

(B) Legitimation of children

This is an administrative direction issued by the Director, Department of Welfare Services, whereby Welfare Officers are required to advise and facilitate unmarried mothers to obtain through the Court a legitimation order in favour of an illegitimate child, and to secure for illegitimate children who are under the care of the Welfare Department and to whom the issue of a legitimation order is denied a proper surname as against surnames which tend to show that the children are illegitimate.

[1] Note furnished by the Government of Cyprus.

ADMINISTRATIVE DIRECTION OF 25 MAY 1965

All Staff:

Re: *Legitimation of children*

Under Section 8 a. of the Illegitimate Children Law Cap. 278 the welfare officer is entitled to apply to the Court for an affiliation order in respect of an illegitimate child which is a charge on public funds. This legal provision is often forgotten by the Welfare Staff and as a result:

(*a*) Illegitimate children in our care suffer for having no recognized paternity.

(*b*) The Department loses maintenance contribution from the putative father.

2. You are now requested to acquaint yourselves with the provision of this law and having gone through your cases, to apply to Court for an affiliation order in respect of every illegitimate child which is a charge on public funds, for which, in your discretion, there is adequate evidence to warrant such an order.

3. In the exercise of your duty you are further advised to acquaint mothers with illegitimate children of their right to apply for an affiliation order.

CZECHOSLOVAKIA

LABOUR CODE OF 16 JUNE 1965, ENTERED INTO FORCE ON 1 JANUARY 1966

SUMMARY

The text of the Labour Code was published in *Sbírka Zákonu,* No. 32, Text 65, of 30 June 1965.

The Code is divided into Basic Principles and the following parts: Part I. General Provisions covering sections 1-26; Part II. Employment Relationship covering sections 27-216; Part III. Apprenticeship covering sections 217-231; Part IV. Contracts for Work Done Otherwise than under an Employment Relationship covering sections 232-239; Part V. Common Provisions covering sections 240-266; and Part VI. Concluding Provisions covering sections 267-280.

The Basic Principles mentioned above read as follows:

"I. Every citizen shall enjoy the right to work. In a workers' society the individual can achieve the full expression of his abilities and the satisfaction of his legitimate interests only by taking an active part in the development of society as a whole, and especially by contributing his rightful share to the work of the community. Work in the interests of society and in accordance with its needs is therefore an essential obligation and at the same time an essential right and matter of honour for every citizen.

"II. The social system of the Czechoslovak Socialist Republic precludes the exploitation of man by man in any form.

"III. The relationships established in virtue of labour law, whereby workers participate in the work of the community in pursuance of this Code, can only be created by agreement between an individual and a socialist organisation. The rights and obligations deriving from such relationships must be exercised and discharged in accordance with the rules of socialist coexistence.

"IV. All workers shall have the right to be remunerated for the work they do, in accordance with its quantity, quality and importance to society, to be assured of occupational safety and health and to be afforded rest and recreation after finishing their work. All socialist organisations shall provide such working conditions as will enable the workers to carry out their jobs as well as possible, having regard to their capacities and knowledge, to show a spirit of initiative and to improve their skills, and as will contribute to the stability of the relationships established in virtue of labour law.

"V. All workers shall have the right and essential obligation towards society to participate in the development, administration and supervision of the activities carried on by socialist organisations and to contribute towards the development and strengthening of the bonds of comradeship created by teamwork and mutual assistance. All socialist organisations shall be required to provide and improve such conditions as will enable this participation to be constantly developed.

"VI. All workers shall be required to discharge in the prescribed manner such obligations as are incumbent upon them as a result of the relationships established in virtue of labour law and by reason of the jobs assigned to them in the socialist organisation concerned, and thereby to strengthen and consolidate socialist labour discipline.

"VII. Women shall be entitled to the same status as men in matters of employment. Women shall be guaranteed such working conditions as will enable them to share in work with due regard not only for their physical characteristics but also, and more particularly, for their social function as mothers and as persons responsible for the education and care of children.

"VIII. Young persons shall be entitled to vocational training and shall be guaranteed such working conditions as will enable them to develop their physical and mental aptitudes successfully.

"IX. Socialist organisations shall be required to take steps to protect the occupational health of workers and shall be liable in accordance with this Code for any injuries they may sustain as a consequence of an employment accident or occupational disease. Workers shall be provided with free prophylactic care and treatment and shall be entitled to material security in the event of their incapacity for work, old age, pregnancy or confinement. Handicapped workers shall be guaranteed such working conditions as will enable them to use and develop their capacities through employment corresponding to their

state of health. Workers who have qualified for an old-age pension shall be afforded opportunities for continued employment. Relationships established in virtue of labour law shall enjoy special legal protection during a person's incapacity for work on account of illness, an accident, pregnancy or confinement.

"X. The participation of the Revolutionary Trade Union Movement in the labour relationships governed by this Code shall form an integral part of those relationships."

The General Provisions in Part I comprise the scope of the Labour Code; the parties to relationships established in virtue of labour law; the participation of the workers in the development, administration and supervision of the activities carried on by organisations; and the guarantee of the right to work in the interests of society. Following are the sections on the scope of the Labour Code:

"1. Relationships in virtue of labour law shall be established between individuals and socialist organisations by the participation of the former in the work of the community. Such relationships shall be governed more particularly by the Labour Code.

"2. (1) The Labour Code shall apply to any relationship deriving from the tenure of a public office to which an individual has been appointed by the working people if provision to that effect is made expressly in the Code itself, in special regulations or in the by-laws of social organisations and the decisions taken thereunder by the central authorities of such organisations.

"(2) To the extent that a person is a party to an employment relationship when holding a public office, that relationship shall be governed by the Labour Code.

"3. (1) Any relationship established in connection with his work by a member of a unified agricultural co-operative or by any person working permanently in such a co-operative on instructions given by its authorities but who is not yet either a member of it or a party to an employment relationship with it, and likewise any relationship established in connection with his work by a member of a production co-operative shall be covered by the Labour Code only in so far as provision to that effect is made expressly in the Code itself, in special regulations or in the by-laws of the co-operative.

"(2) In so far as a unified agricultural or production co-operative is permitted by its by-laws or by special regulations to establish employment relationships with persons who are not members of the co-operative or concludes contracts for work done otherwise than under an employment relationship (sections 232 *et seq.*), the relationships so established in virtue of labour law shall be governed by the Labour Code.

"(3) The Labour Code shall also apply to apprentices articled to unified agricultural and production co-operatives.

"4. The Labour Code shall apply to members of the armed forces on active service, members of the Public Security Force, public prosecutors and investigators of the Public Prosecutor's Office only in so far as provision to that effect is made expressly in the Code itself or as is stipulated in special regulations.

"5. Save as otherwise provided in special regulations the Labour Code shall apply to schoolchildren and students during their production work or practical instruction, to persons receiving post-graduate scientific or artistic training and to members of regional lawyers' associations.

"6. Save as otherwise provided by international private law the relationships established in virtue of labour law between citizens and foreign organisations and between aliens working in the Czechoslovak Socialist Republic and Czechoslovak organisations shall be governed by the Labour Code.

"7. Aliens and stateless persons shall not be allowed to become parties to an employment relationship unless they have been granted permission to reside in the Czechoslovak Socialist Republic."

The employment relationships dealt with in Part II include contracts of employment relationships; alteration of employment relationships; termination of employment relationships; claims in respect of the unlawful termination of employment relationships; election and appointment; parallel employment relationships and subsidiary activities; labour discipline and rules of employment; hours of work and breaks; overtime and night work; vacation leave; wages; compensation in lieu of wages where certain obstacles arise in connection with the work; compensation for expenses incurred by workers in connection with their work; occupational safety and health; workers' welfare, vocational training and working conditions; security in the event of incapacity for work or old age and employment on return to work; working conditions of women; working conditions of pregnant women and mothers; working conditions of young persons; prevention of damage; liability of workers for damage caused during or in direct connection with the performance of their duties; liability of organisations; and determination of labour disputes.

Translations of the Code into English and French have been published by the International Labour Office as *Legislative Series* 1965—Cz.1.

DAHOMEY

ACT No. 65-17 OF 23 JUNE 1965 ESTABLISHING THE DAHOMEAN NATIONALITY CODE [1]

PRELIMINARY TITLE

GENERAL PROVISIONS

Art. 1. The law shall determine which persons at birth have Dahomean nationality as their nationality of origin.

Dahomean nationality shall be acquired or lost after the date of birth by process of law or by a decision of the public authorities taken in accordance with the law.

Art. 2. The provisions relating to nationality contained in international treaties or agreements duly ratified and published apply even when they are at variance with the provisions of Dahomean domestic law.

Art. 3. A change in nationality can in no case result from an international convention unless such a convention makes specific provision to that effect.

Art. 4. In cases where, under an international convention, a change of nationality is dependent on the drawing up of an instrument of option, the form of that instrument shall be determined by the legislation of the contracting country in which it is drawn up.

Art. 5. A person shall attain his majority for the purposes of this Code on reaching the age of twenty-one.

Art. 6. Filiation shall affect the attribution of Dahomean nationality only if established in accordance with the requirements of Dahomean law.

TITLE I

THE ATTRIBUTION OF DAHOMEAN NATIONALITY AS THE NATIONALITY OF ORIGIN

Chapter I

THE ATTRIBUTION OF DAHOMEAN NATIONALITY BY BIRTH IN DAHOMEY

Art. 7. A person born in Dahomey of a father likewise born in Dahomey shall be a Dahomean national.

A person who is ordinarily resident in the Territory of the Republic of Dahomey and owns property in Dahomey shall be presumed to fulfil those two conditions. Proof to the contrary may be produced in the form and manner provided for in Title V of this Act.

Art. 8. A person born in Dahomey of a mother likewise born in Dahomey shall be a Dahomean national unless he renounces that status during the six months before attaining his majority.

Art. 9. A person born in Dahomey shall be deemed to be a Dahomean national if he is unable to claim any other nationality of origin, either because his parents are unknown or because, although they are known, they themselves have no nationality.

Art. 10. A new-born child found in Dahomey shall, failing evidence to the contrary, be presumed to have been born in Dahomey.

Art. 11. The provisions of articles 7 and 8 shall not apply to children born in Dahomey of career diplomatic or consular agents of foreign nationality or of representatives or officials of foreign States assigned on mission to international organizations domiciled in Dahomey.

Such children shall nevertheless have the right to acquire Dahomean nationality voluntarily in accordance with the provisions of article 28 below.

Chapter II

ATTRIBUTION OF DAHOMEAN NATIONALITY BY RIGHT OF FILIATION

Art. 12. The following persons shall be Dahomean nationals:

(1) A child of a Dahomean father;

(2) A child of a Dahomean mother when the father is unknown or has no known nationality.

Art. 13. A child of a Dahomean mother and of a father who is a foreign national shall be deemed to be a Dahomean national, provided always that he may renounce Dahomean nationality during the six months preceding his attainment of majority if he was not born in Dahomey.

[1] *Journal officiel de la République du Dahomey*, No. 17 of 1 August 1965.

Chapter III

COMMON PROVISIONS

Art. 14. Any minor possessing the right to renounce Dahomean nationality in the cases specified in articles 8 and 13 may exercise such right without any authorization by means of a statutory declaration as stipulated in article 54 *et seq.*

He may renounce the said right under the same conditions if he has attained the age of eighteen years. If he has attained the age of sixteen years but not the age of eighteen years, such renunciation shall require authorization by whichever of his parents exercises parental authority over him or, in the absence of that, by his guardian upon consent of the family guardianship council.

Art. 15. In the cases specified in the preceding article, no person may renounce Dahomean nationality unless he can show proof that he has by filiation the nationality of another country and that he has discharged his military obligations (if any) under the law of that country and subject always to the provisions of international agreements.

Art. 16. A Dahomean minor who voluntarily enlists in the national armed forces shall lose the right to renounce Dahomean nationality.

TITLE II

ACQUISITION OF DAHOMEAN NATIONALITY

Chapter I

METHODS OF ACQUIRING DAHOMEAN NATIONALITY

Section I. Acquisition of Dahomean nationality by filiation

Art. 17. A non-Dahomean minor adopted by a person of Dahomean nationality or by a married couple both of whom are of Dahomean nationality shall acquire that nationality. He shall, however, have the option of renouncing it during the six months preceding his attainment of majority, and he may renounce the said option under the conditions specified in articles 14 and 15.

Section II. Acquisition of Dahomean nationality by marriage

Art. 18. Subject to the provisions of articles 19, 20, 22 and 23, a foreign woman who marries a Dahomean national shall acquire Dahomean nationality at the time of the marriage.

Art. 19. If the national law of a woman permits her to retain her nationality of origin upon marriage, she shall have the option of declaring, before the celebration of the marriage and in the manner specified in article 54 *et seq.*, that she declines Dahomean nationality.

She may exercise this option without any authorization, even if she is a minor.

Art. 20. The Government may, by decree, oppose the acquisition of Dahomean nationality within six months after the date on which the marriage was celebrated.

If the marriage is celebrated in another country, the time-limit specified in the preceding paragraph shall be reckoned from the date on which the particulars of the marriage certificate are entered in the civil registry of the Dahomean diplomatic or consular agents.

In case of objection by the Government, the woman concerned shall be deemed never to have acquired Dahomean nationality.

Art. 21. During the time-limit fixed in the preceding article, a woman who has acquired Dahomean nationality by marriage may not vote or be a candidate for an elective post or office where registration as a voter or the exercise of the said post or office is conditioned on the possession of Dahomean nationality.

Art. 22. The marriage shall not affect the attribution of Dahomean nationality unless it is celebrated according to one of the forms recognized either by Dahomean legislation or customs or by the legislation of the country in which the marriage was celebrated. If the marriage is celebrated in accordance with one of the Dahomean customs, it must be recorded in writing in order to have effect within the meaning of this article.

Art. 23. A woman shall not acquire Dahomean nationality if her marriage to a Dahomean is declared null and void by a decision taken by a Dahomean court or enforceable in Dahomey, even though the marriage was contracted in good faith.

Section III. Acquisition of Dahomean nationality by birth and residence in Dahomey

Art. 24. Every individual born in Dahomey of foreign parents shall acquire Dahomean nationality when he comes of age if he is resident in Dahomey on that date and has habitually resided in Dahomey since the age of sixteen years.

Art. 25. During the six months before he comes of age, a minor shall have the option of declaring under the conditions specified in article 54 *et seq.* that he declines Dahomean nationality. He may exercise this option without any authorization.

The Government may, by decree, oppose the acquisition of Dahomean nationality within the same time-limit.

Art. 26. A foreigner who satisfies the conditions specified in article 24 for the acquisition of Dahomean nationality shall not be entitled to decline Dahomean nationality except in conformity with the provisions or article 15 above.

He shall lose the option of declining Dahomean nationality if he voluntarily enlists in the national armed forces.

Art. 27. The provisions of the present section shall not apply to children born in Dahomey of career diplomatic or consular agents of foreign nationality, or of representatives or officials of foreign States assigned on mission to international organizations domiciled in Dahomey. The said children shall, however, have the option of becoming Dahomean nationals voluntarily in conformity with the provision of article 28 below.

Section IV. Acquisition of Dahomean nationality by declaration of nationality

Art. 28. A minor who was born in Dahomey of foreign parents may claim Dahomean nationality by declaration, under the conditions specified in article 54 *et seq.*, if at the time of his declaration he has resided in Dahomey for at least five years.

Art. 29. A minor who has attained the age of eighteen years may claim Dahomean nationality without any authorization.

If he has attained the age of sixteen years but not the age of eighteen years, he may claim Dahomean nationality only if he is authorized to do so by whichever of his parents exercises parental authority over him or, in the absence of that, by his guardian upon consent of the family guardianship council.

Art. 30. Subject to the provisions of articles 31 and 57, Dahomean nationality shall be acquired by declaration on the date on which the declaration is signed.

Art. 31. Within six months following the date of the declaration, the Government may, by decree, oppose the acquisition of Dahomean nationality.

Section V. Acquisition of Dahomean nationality by decision of the public authorities

Art. 32. Dahomean nationality may be acquired by decision of the public authorities through naturalization or through recovery of nationality upon application by the person concerned.

Sub-section 1. Naturalization

Art. 33. Naturalization shall be granted by decree after due investigation.

Art. 34. No person may be naturalized unless he is resident in Dahomey at the time when the naturalization decree is signed.

Art. 35. Naturalization may be granted to a foreigner if he:

(1) Has attained the age of majority specified in article 5 above;

(2) Proves that he has habitually resided in Dahomey during the three years preceding the submission of the application, subject to the exceptions specified in article 36 below;

(3) Is of good conduct and moral character and has not incurred a sentence of over one year's imprisonment (not annulled by rehabilitation or amnesty) for an offence under ordinary law;

(4) Is known to be sound in body and mind; and

(5) Can produce evidence of his assimilation in the Dahomean community, in particular by an adequate knowledge, according to his condition, of a Dahomean language or of the official language.

Art. 36. The following persons shall not be subject to the condition of residence specified in the preceding article:

(1) A foreigner born in Dahomey or married to a Dahomean.

(2) The wife of a foreigner who acquires Dahomean nationality, or his child of full age.

(3) A foreigner of full age adopted by a person of Dahomean nationality.

(4) A foreigner who has rendered signal service to Dahomey or whose naturalization is of unquestionable interest to Dahomey.

Sub-section 2. Recovery of nationality

Art. 37. Recovery of Dahomean nationality shall be granted by decree after due investigation.

Art. 38. Dahomean nationality may be recovered, at any age and without any residence requirement, by any person resident in Dahomey who proves that he has been a Dahomean national in the past.

Art. 39. Recovery of nationality shall not be granted to:

(1) An individual who has forfeited Dahomean nationality through the application of article 51 of this Code, unless, in the event that the forfeiture was due to conviction of an offence, he has been judicially rehabilitated or granted the benefit of an amnesty law.

(2) A foreigner against whom an expulsion or house arrest order has been issued, if the said order has not been annulled under the same rules under which it was issued.

Chapter II

EFFECTS OF THE ACQUISITION OF DAHOMEAN NATIONALITY

Art. 40. A person acquiring Dahomean nationality shall, from the date of acquisition, enjoy all the rights inherent in the status of a Dahomean national, subject to the disabilities specified in the following article or in special laws.

Art. 41. A naturalized foreigner shall be subject to the following disabilities:

(1) During a period of five years following the naturalization decree he may not hold any high office established under the Constitution or

any elective office for the exercise of which Dahomean nationality is required;

(2) During a period of three years following the naturalization decree he may not vote in an election for which only Dahomean nationals may be registered as electors;

(3) During a period of three years following the naturalization decree, he may not be appointed to a public post remunerated by the State or hold ministerial office.

Art. 42. If a naturalized person has rendered signal service to Dahomey or if his naturalization is of unquestionable interest to Dahomey, the naturalization decree may relieve him, in whole or in part, of the disabilities prescribed in article 41.

Art. 43. A minor shall acquire Dahomean nationality as a matter of right if his father (or his mother if his father is unknown or deceased) acquires Dahomean nationality.

A minor who is adopted shall acquire Dahomean nationality as a matter of right if the adopter acquires (or, in the event of adoption by a married couple, if both the husband and the wife acquire) Dahomean nationality, but the adopted person shall have the option of renouncing Dahomean nationality under the conditions prescribed in article 17.

Art. 44. The provisions of the preceding article shall apply:

(1) To a married minor;

(2) To a minor who has served or is serving in the armed forces of his country of origin.

TITLE III

LOSS AND FORFEITURE OF DAHOMEAN NATIONALITY

Chapter I

LOSS OF DAHOMEAN NATIONALITY

Art. 45. A Dahomean minor shall lose Dahomean nationality if he exercises the option of renouncing such nationality in the cases specified in articles 8, 13, 17 and 43.

Art. 46. The following persons shall lose Dahomean nationality:

(1) A Dahomean of full age who voluntarily acquires a foreign nationality if, before and with a view to such acquisition, he has been authorized by the Dahomean Government, at his own request, to give up his Dahomean nationality.

The authorization shall be granted by decree.

(2) A Dahomean national, even if he is a minor, if, being also a national of a foreign country, he is authorized by the Dahomean Government, at his own request, to give up his Dahomean nationality.

Such a request may be submitted by any interested person who has attained the age of sixteen years. The authorization shall be granted by decree.

The minor must receive authorization under the conditions specified in article 29, where applicable.

Art. 47. A Dahomean who loses Dahomean nationality shall be released from his allegiance to Dahomey:

(1) In the case specified in article 45, on the date on which he signs the declaration;

(2) In the case specified in article 46, paragraph (1), on the date on which he acquires foreign nationality;

(3) In the case specified in article 46, paragraph (2), on the date of the decree authorizing him to give up his Dahomean nationality.

Art. 48. A Dahomean woman who marries a foreigner shall retain her Dahomean nationality unless, before the marriage takes place and in accordance with the conditions and procedure laid down in article 54 *et seq.*, she expressly declares that she renounces the said nationality.

The declaration may be made without authorization even if the woman is a minor.

The declaration shall be valid only if the woman acquires or is able to acquire her husband's nationality, under his national law.

In such a case the woman shall be released from her allegiance to Dahomey on the date on which the marriage was celebrated.

Art. 49. A Dahomean national who in fact behaves as a national of a foreign State may, if he possesses the nationality of that State, be declared by decree to have lost Dahomean nationality.

In such a case, he shall be released from his allegiance to Dahomey on the date of the said decree.

The measure taken in respect of such a Dahomean national may be extended to his wife and minor children if they themselves possess a foreign nationality. However, it may not be extended to the minor children if it is not also extended to the wife.

Art. 50. A Dahomean shall lose Dahomean nationality if, being employed in the public service of a foreign State or in foreign armed forces, he continues such employment despite an injunction from the Dahomean Government calling on him to resign his post.

Six months after notification of the said injunction, the person concerned shall, by decree, be declared to have lost Dahomean nationality if he has not resigned his employment during that time, unless it is established that he has been absolutely unable to do so. In the latter case, the six-month period shall be reckoned from the day when the cause of the inability is removed.

The person concerned shall be released from his allegiance to Dahomey on the date of the decree.

The measure taken in respect of such Dahomean national may be extended to his wife and minor children if they themselves possess a

foreign nationality. However, it may not be extended to the minor children if it is not also extended to the wife.

Chapter II

FORFEITURE OF DAHOMEAN NATIONALITY

Art. 51. A person who has acquired Dahomean nationality shall forfeit such nationality by decree:

(1) If he is convicted of an act designated as a crime or an offence against the internal or external security of the State.

(2) If he has performed, for the benefit of a foreign State, acts incompatible with Dahomean nationality and prejudicial to the interests of Dahomey.

(3) If he has been convicted in Dahomey or abroad of an act constituting a crime under Dahomean law, and has been sentenced to at least five years' imprisonment.

(4) If he is convicted and sentenced for evading his obligations under the laws governing military service.

Art. 52. Nationality shall not be forfeited unless the acts of which the person concerned is accused, as specified in the preceding article, were committed within ten years after the date of acquisition of Dahomean nationality.

Forfeiture of nationality may be decreed only within ten years from the time when the acts in question were committed.

Art. 53. Forfeiture of nationality may be extended to the wife and minor children of the person concerned, provided that they are of foreign origin and have retained a foreign nationality.

It may not, however, be extended to the minor children if it is not also extended to the wife.

...

DENMARK

NOTE [1]

I. LEGISLATION

1. Through amendments to the statutes on election (No. 198, 4 April 1964) it has been made possible for persons living outside the municipal districts in remote areas in Greenland to cast their vote at the elections for Parliament.

2. A new act on public assistance to disabled persons has been adopted (No. 219, 4 April 1965). The most important amendment compared to the pre-existing legislation is, that it has been made possible to render a more individualized assistance to the persons in question.

II. INTERNATIONAL AGREEMENTS

1. On 10 November 1964, Denmark ratified the United Nations Educational, Scientific and Cultural Organization Convention concerning the International Exchange of Publications.

2. On 3 March 1965, the European Social Charter was ratified.

3. The resolutions of The Committee of Ministers of the Council of Europe on Remand in Custody and on Suspended Sentence, Probation and other Alternatives to Imprisonment have been published in the official legal gazette.

III. MISCELLANEOUS

In his report for the year 1965 the Ombudsman has expressed as his opinion, that it is less satisfying that no written general rules exist as to the participation of detained persons in religious services in certain prisons. The Directorate of Prison Administration has now taken steps to work out such rules.

[1] Note furnished by Mr. Vilhelm Boas, Permanent Secretary of State, Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights.*

DOMINICAN REPUBLIC

ACT OF DOMINICAN RECONCILIATION

of 31 August 1965 [1]

Convinced of the absolute necessity to restore peace and unity to the Dominican family, to promote the economic recovery of the nation and to re-establish its democratic institutions,

Determined to achieve their high purpose of assuring a climate of peace and conciliation in which all Dominicans can live under a system of freedom and social justice,

The Parties signing below who declare that they represent respectively, in the capacities indicated, the "Government of National Reconstruction" and the provisional government of the Dominican Republic hereby make it known that they have reached the following agreement as a result of negotiations carried out by the *Ad Hoc* Committee of the Tenth Meeting of Consultation of Ministers of Foreign Affairs, whose members also sign the present Act as further testimony that the Parties have agreed to comply with its terms:

1. The "Government of National Reconstruction" accepts the provisional government presided over by Dr. Hector Garcia Godoy as the sole and sovereign Government of the Dominican Republic. The members of the "Government of National Reconstruction" will offer their fullest co-operation to the provisional government in the re-establishment and consolidation of political peace, as well as in the rehabilitation of the national economy.

2. The Parties accept the Institutional Act resulting from this agreement as the constitutional instrument under which the provisional government will exercise its functions. No previous constitution will have effect during the existence of the Institutional Act, whose text is annexed to this agreement.

3. The provisional government will, on the day it takes office, proclaim a general amnesty provided for in article 11 of the Institutional Act and will take the necessary measures to release all political prisoners.

...

[1] *Gaceta Oficial*, No. 8944 of 4 September 1965. Translation into English by the Organization of American States and taken from *Security Council, Official Records, Twentieth Year, Supplement for July, August and September 1965.*

INSTITUTIONAL ACT

Preamble

The Dominican Republic has been constitutionally, since its founding, a free and independent state whose government is essentially civil, republican, democratic, and representative, and its political organization must be based on the effective exercise or suffrage.

The holding of free elections is, therefore, the most effective means for ascertaining the sovereign will of the people in the present crisis, in order to guarantee a return to a legally constituted government, founded on the supreme authority of law and respect for human rights and fundamental liberties.

Consequently, the purpose of this institutional act is to provide to the provisional government, in the name of the people, sole possessors of the constitutive power, the necessary means for the full exercise of political and administrative authority throughout the Dominican territory in order that a representative democratic régime may be re-established by holding free elections. The institutional act also provides this government with the necessary means for guaranteeing respect for human rights and fundamental liberties and for initiating those programmes urgently required for the economic and social recovery and development of the Dominican nation.

PART ONE

ORGANIZATION OF THE PROVISIONAL GOVERNMENT

Article 1. From the entry into force of this institutional act until the inauguration of the government elected by the electoral process provided for herein, the Republic shall have a provisional government headed by a President. The Government shall also have a Vice-President and a Cabinet, composed as stipulated in article 6.

Article 2. The provisional President shall legislate on any matter not contrary to the provisions of this institutional act but approval by two-thirds of the members of the Cabinet shall be required when laws on the following questions are concerned:

A. Changes in the legal money and banking system.

B. Election of judges of the Supreme Court of Justice.

C. Changes in the political boundaries of the national territory.

D. Approval or denunciation of international treaties.

E. Declaration of war against other states.

F. Sending of Dominican troops abroad.

G. Establishment or abolition of courts of any nature.

H. Declaration of a state of siege in the event of disturbance of the public peace and, as a result thereof, suspension of the exercise of human rights set forth in articles 15, 19, 20, 21, 22, 30, 33 and 34 of this institutional act.

I. Declaration of a state of national emergency, suspending the exercise of human rights with the exception of the inviolability of life.

...

Article 6. For the purpose of handling the business of public administration, such ministries shall be formed as established by law. There shall be no less than eight and no more than eleven ministries. A minister or deputy-minister must be a Dominican enjoying the full exercise of his civil and political rights, and must be at least 25 years of age. Naturalized Dominicans may not be ministers or deputy-ministers until after they have been Dominican citizens for at least five years. The executive branch shall regulate the functioning of the various ministries.

...

Article 11. The provisional government shall issue a general amnesty from criminal responsibility for acts of the civil war, with the exception of crimes under ordinary law, committed under cover of the prevailing political situation. This type of criminal responsibility shall be subject to public action, after the complaint submitted by the party concerned has been admitted.

...

PART TWO

HUMAN RIGHTS AND FUNDAMENTAL LIBERTIES

Article 13. The provisional government hereby pledges to respect and enforce respect for the human rights and public liberties set forth in the American Declaration of the Rights and Duties of Man and of the Organization of American States and the Universal Declaration of Human Rights of the United Nations.

The provisional government also pledges to respect and enforce respect for the economic and social achievements and the principles, methods, and objectives of economic and social policy contained in the Declaration and Charter of Punta del Este.

Article 14. To ensure strict compliance with the provisions of the preceding article, the provisional government undertakes to respect and enforce respect for the human rights and fundamental liberties set forth in the following articles.

Article 15. The inviolability of human life is proclaimed. Neither the death penalty nor any other that implies loss of the physical integrity of the individual may be established. However, the law may establish the death penalty for those who, in case of action of self-defense against a foreign state, are guilty of crimes against the defense of the nation, or of treason or espionage in favour of the enemy.

Article 16. Personal liberty is declared to be inviolable. Any form of personal detention, inspection, or search not deriving from the competent authority, acting only in the cases and manner prescribed by law, shall be considered arbitrary and unlawful.

Article 17. Freedom of belief and of conscience and freedom of religious and ideological profession are inviolable. The profession of all religions and the exercise of all forms of worship shall be limited only by respect for moral law, the public order, or good customs.

Article 18. All inhabitants of Dominican territory may take action in the courts to safeguard and defend their own rights and their legitimate interests. Justice shall be administered free of charge.

Article 19. Corporal punishment shall not be established for debts that do not arise from infractions of the penal laws.

Article 20. No person may be imprisoned or deprived of his liberty without a written order stating reasons for such action, issued by the competent judicial authority, save in the case of *flagrante delicto*.

Article 21. Any person deprived of his liberty without cause or without legal formalities, or on grounds not provided for by law, shall be released immediately on his own demand or that of any other person. The law of *habeas corpus* shall determine the summary proceedings to be followed in such cases.

Article 22. Any person deprived of his liberty shall be brought before the competent judicial authority within forty-eight hours after his arrest, or shall be released.

Article 23. All arrests shall be void or shall be changed to imprisonment within forty-eight hours after the arrested person has been brought before the competent judicial authority, and the person concerned must be notified within the same period of the ruling handed down in the case.

Article 24. No person may be sentenced without a hearing or due summons or without observance of the procedures established by law to ensure impartial judgment and the exercise of the right of defense. Hearings shall be public, unless excepted by law in cases where publicity might be prejudicial to the public order or to good customs.

Article 25. No one may be tried twice for the same offense, or required to testify against himself.

Article 26. No Dominican may be expelled from the country. The deportation or expulsion from Dominican territory of any alien shall take place only by virtue of a sentence rendered by a competent court, after compliance with due legal formalities and procedures.

Article 27. The right of all citizens is recognized to join political parties, which may be freely established, the only requirement being that they be organized for peaceful purposes consistent with the principle of representative democracy.

Article 28. All inhabitants of the national territory have the right to form associations and societies. Associations or societies which have the purpose of engaging in or which carry on activities contrary to law or which threaten the public order, good customs, or the institutional systems organized by this institutional act, and those organized on the basis of privilege and discrimination because of class, race, or social position, are prohibited.

Article 29. The domicile is inviolable. No search or entry may be carried out except by order of the competent judicial authority. When a delay would imply certain or imminent danger, such search or entry may also be carried out by the agencies of officials established by law, and in such case there must be strict adherence to the provisions of the law. Any proceeding that affects or restricts the inviolability of domicile may be justified only by evidence of a collective danger or a risk to human life. The general rule is established that no one may enter the domicile of another at night without the consent of the person residing there, except when it is a matter of assisting victims of a crime or disaster. The domicile of another may be entered by day only in those cases and in the manner prescribed by law.

The law may also provide that such procedure be followed for the purpose of preventing imminent danger to public safety and order, especially in order to combat the threat of an epidemic or to protect minors who are in danger.

Article 30. All persons may, without any prior censorship freely express their thoughts by the spoken word, in writing, or by any other graphic or oral means of expression, provided that the thoughts so expressed are not contrary to morality, the public order, or good customs, in which cases the penalties provided by law shall be imposed.

All anonymous propaganda, war propaganda, or any other aimed at inciting disobedience of the laws is prohibited, although this latter does not restrict the right to analyze or criticize legal precepts.

Article 31. The press may not be subject to any kind of coercion or censorship. The only limitation on freedom of the press is that imposed by respect for private life, morality, the public peace, and good customs.

Article 32. Correspondence and other private documents are declared to be inviolable; they may be seized and inspected only through legal proceedings in connection with matters being tried in court. The secrecy of communication by telegraph, telephone, and cable is likewise inviolable.

Article 33. Freedom of transit is proclaimed. Consequently, all inhabitants of the Republic have the right to leave and enter its territory, and to travel and to change their residence without authorization, safeconduct, passport, or other requisites, provided they carry with them their identification documents.

The exercise of this right may be restricted by the competent judicial authorities in the case of persons involved in criminal, civil, and commercial proceedings or who have matters pending before the administrative authorities. Exercise of this right may also be restricted by provisions of immigration laws in respect of public health or concerning undesirable aliens in the country.

Article 34. The inhabitants of the Republic have the right to assemble peacefully for all lawful purposes of life, with no limitations except those necessary to ensure maintenance of public order.

Article 35. All persons shall have access to the records of persons being detained and in prison.

Article 36. Any act that affects the personal integrity, safety, or honour of a detained or convicted person shall be chargeable against such person's captors or guards, who may submit evidence to the contrary.

Subordinates have the right to refuse to comply with the orders or decisions of their superiors when they are contrary to the guaranties provided for in this article.

Article 37. Persons detained or imprisoned for political reasons shall be confined in separate quarters from those used for common offenders and they shall not be required to do any work or to be subject to the rules and regulations governing common criminals.

Article 38. The solitary confinement of any prisoner or person detained and all harassing publicity about any such person are prohibited.

Article 39. The use of violence, torture, or coercion of any kind on persons in order to compel them to make statements is absolutely prohibited. Any statement obtained through a violation of this provision shall be null and void, and those responsible for it shall be subject to the pertinent penalties.

Article 40. The state shall exercise vigilance to see that prisons are converted into modern penal establishments, working for the correction of the delinquent and the prevention of crime.

The primary purpose of all penal institutions must be to develop in the convict an aptitude for work, good habits, and good social customs. In no case shall prisons serve for the humiliation or brutal treatment of the offender.

Article 41. Resistance is declared to be legitimate when its purpose is to defend the human rights proclaimed above, which do not exclude the other rights established by this institutional act, others of like nature, or those emanating from the sovereignty of the people and the democratic system.

Article 42. The ordinary courts shall have exclusive jurisdiction to take cognizance of violations of the preceding articles, regardless of the place, circumstances, and persons concerned in the arrest or imprisonment. The law shall determine the applicable penalties.

Article 43. The right of citizens and juristic persons to direct petitions to the public authorities requesting measures of public or private interest is recognized.

The public authorities have the duty to answer such petitions through their officials or representatives within a reasonable time not to exceed 30 days.

Article 44. Prosecution of violations of this title is declared to be a matter of public order. Such prosecution may be initiated officially or upon a simple complaint by any natural or juristic person.

Article 45. Private economic enterprise is declared to be free. However, it may not be practised to the detriment of the safety, liberty, human dignity or social interest.

Every person has the right to work in dignity and to follow his vocation freely, in so far as opportunities for employment permit. Every person who works has the right to receive remuneration that, in relation to his capacity and skill, shall assure a proper standard of living to him and his family.

Every person has the right to own private property that will meet the essential needs of a decent life that will contribute to the maintenance of the dignity of the person and the home.

Article 46. All acts committed by those who, for their personal gain, misappropriate public funds or who use their positions in government agencies or departments or autonomous agencies to obtain unlawful economic benefits are declared to be crimes against the people.

Persons who, by virtue of those same positions, deliberately provide advantages to their associates, relatives, friends, and acquaintances shall be considered guilty of the same crime.

Article 47. No one may be compelled to do what the law does not require, nor be prevented from doing what the law does not prohibit.

Article 48. In the exercise of his rights and the enjoyment of his liberties, every person shall be subject only to the limitations established by law for the sole purpose of ensuring recognition of and respect for the rights and liberties of others, of the social interest and of satisfying the just exigencies of morality, public order, and the general welfare in a democratic society.

PART THREE

THE ELECTORAL PROCESS

Article 49. The provisional government pledges to hold elections within a period of no less than six and no more than nine months from the entry into force of this institutional act, to elect a President and Vice-President of the Republic and members of the national congress for a period of four years and mayors and councilmen of municipalities for a period of two years. In order that a climate of peace and tranquillity may be established, the provisional president will urge political groups and parties and the citizenry in general to refrain from all political activity until three months before elections are held.

Article 50. The vote shall be individual, free, secret, and popular. The exercise of the right to vote is a civic duty of every citizen, with the following exceptions:

Those who have lost their citizenship rights pursuant to this institutional act;

Those belonging to the armed forces or to the national police.

Article 51. The elections shall be free in order to reflect the will of the Dominican people. The provisional government will request the co-operation of the Organization of American States in election preparations and the electoral process. This co-operation will include the presence of the Inter-American Commission on Human Rights in the Dominican Republic, from the time of the entry into force of this institutional act until the elected government takes office.

PART FOUR

GENERAL PROVISIONS

Article 52. All laws, decrees, regulations, or acts contrary to this institutional act shall be automatically null and void.

All usurped authority shall be without effect, and its acts shall be null and void. Any decision made by requisition of the armed forces that is incompatible with the procedures established by law shall be null and void.

The laws shall not be retroactive, except where they are favourable to one who is *sub judice* or serving a sentence.

Article 53. The government elected in accordance with article 49 of this institutional act, shall, within four months after taking office,

convoke a constituent assembly to make a decision on the constitutional problem. The convocation summons shall fix the duration of the constituent assembly, and after the congress has been elected, it shall establish the procedure for making up the assembly.

...

Article 55. This institutional act shall remain in force until the constitution promulgated shall have been approved by the constituent assembly provided for in article 53. In the interval between the assumption of office by the elected government and the promulgation of the new constitution, the provisions contained in titles III, IV, V, and VI of part two of the 1963 Constitution, relating to the legislative branch and the executive branch, respectively, shall be in effect. [2]

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[2] For extracts from the Constitution of 1963, see *Yearbook on Human Rights* for 1963, pp. 90-97.

ECUADOR

NOTE [1]

1. No constitutional provisions or amendments relating to the respect for or protection of human rights were adopted in Ecuador in 1965.

2. The following Acts and amendments to Acts relating to this subject were adopted during the year:

Supreme Decree No. 83, which contains the Protection of Minors Act aimed mainly at ensuring medical and financial assistance for pregnant women (*Registro Oficial,* No. 419, 20 January 1965). Supreme Decree No. 578, making various changes in the Criminal Code (*Registro Oficial,* No. 459, 17 March 1965).

Supreme Decree No. 2912, extending the scope of Supreme Decree No. 2490, of 29 October 1964, on the workers' right to a vacation (*Registro Oficial,* No. 412, 11 January 1965).

Supreme Decree No. 636, amending Title IV of the Labour Code, relating to compensation (*Registro Oficial,* No. 467, 29 March 1965).

Supreme Decree No. 979, amending the provisions of the Labour Code relating to organization, jurisdiction and procedure (*Registro Oficial,* No. 496, 10 May 1965).

Supreme Decree No. 2644-A, interpreting article 36 of the above-mentioned Decree 979 (*Registro Oficial,* No. 636, 29 November 1965).

3. We feel that we should list the following amendments to Acts, adopted in 1962, 1963 and 1964, relating to the changes mentioned in this note:

Legislative Decree of 23 November 1963, which amends the provisions of the Criminal Code relating to the serving of sentences (*Registro Oficial,* No. 317, 27 November 1962).

Supreme Decree No. 564, prohibiting the summary dismissal of workers (*Registro Oficial,* No. 78, 14 October 1963).

Supreme Decree No. 2490, amending Title I of the Labour Code, relating to contractual employment between individuals (*Registro Oficial,* No. 365, 2 November 1964).

[1] Note furnished by the Government of Ecuador.

EL SALVADOR

PRIVATE UNIVERSITIES ACT

Promulgated by Decree No. 244 of 24 March 1965 [1]

Art. 1. Authorization is granted for the establishment and operation of private universities that meet the requirements of this Act.

Art. 2. Private universities shall have the following objectives:

(*a*) To preserve, develop and disseminate culture;

(*b*) To carry out scientific, philosophical, artistic and technical research concerning the world at large, and Latin America, Central America and El Salvador in particular;

(*c*) To provide professional training to persons who will be morally and intellectually equipped to perform their respective functions in society; and

(*d*) To work towards the all-round education of the student along with a sense of social responsibility.

...

Art. 4. Private universities shall enjoy autonomy in respect of instruction, administration and finances with the following limitations:

(*a*) In no case may the programmes of studies of private universities be inferior to those of the University of El Salvador;

(*b*) Foreign professors engaged by private universities shall apply to the Department of Education of the Executive Power for legal accreditation of their capacity to teach at the university level by presenting proof that they hold the requisite academic degrees;

(*c*) Full Salvadorian professors shall be graduates, or former faculty members, of the University of El Salvador, or graduates of private Salvadorian universities, or shall have obtained authorization to exercise the profession; and

(*d*) Salvadorians who have taken academic degrees at foreign universities in professions or technical disciplines in which neither the University of El Salvador nor the private universities confer degrees may be full professors, provided that they apply to the Department of Education of the Executive Power accreditation of their degrees.

Art. 5. A private university may not be established unless it has at least one faculty specializing in science, economics, social studies or physicomathematics applied to technology.

Art. 6. The executive or administrative officers of the private universities shall be Salvadorian nationals over the age of twenty-one years. Other requirements shall be fixed by statute.

Art. 7. Private universities shall be self-supporting and exempt from all forms of taxation.

Gifts, inheritances and legacies in favour of private universities shall be exempt from gift and inheritance taxes, gifts being deductible from taxable income.

Associations that economically support private universities may not interfere in their teaching activities.

...

Art. 10. In no case may private universities refuse admittance to a student for reasons of race, sex, creed or political ideas.

...

[1] *Diario Oficial,* No. 62 of 30 March 1965.

NATIONAL EMERGENCY SERVICE ACT

Promulgated by Decree No. 302 of 4 June 1965 [2]

Art. 1. The purpose of the National Emergency Service Act is to lay down the organization and functions of the National Emergency Service, and to regulate its activities.

Art. 2. The functions of the National Emergency Service are as follows:

(*a*) To take the necessary precautions in due time before an imminent public disaster;

(*b*) To adopt all appropriate measures to

[2] *Ibid.,* No. 103 of 7 June 1965.

prevent greater loss and damage from any public disaster; and

(*c*) To ensure the continuity of public services in the event of a public disaster, adapting them to the circumstances.

...

Art. 14. The provisions of this Act are of a permanent nature and shall always apply whenever the described circumstances manifest themselves. The Department of Interior of the executive branch of the Government shall order the state of emergency and indicate the areas affected.

The declaration of an emergency shall not imply the suspension of constitutional guarantees.

...

FEDERAL REPUBLIC OF GERMANY

THE DEVELOPMENT OF HUMAN RIGHTS IN 1965 — A SURVEY OF LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS [1]

CONTENTS

ABBREVIATIONS

ABl	*Amtsblatt* (official gazette [of the Saar])
BGBl	*Bundesgesetzblatt* (official gazette of the Federal Republic); parts I and II
BGHSt	*Entscheidungen des Bundesgerichtshofs in Strafsachen* (Decisions of the Federal Court of Justice in criminal cases)
BGHZ	*Entscheidungen des Bundesgerichtshofs in Zivilsachen* (Decisions of the Federal Court of Justice in civil actions)
BVerfGE	*Entscheidungen des Bundesverfassungsgerichts* (Decisions of the Federal Constitutional Court)
BVerwGE	*Entscheidungen des Bundesverwaltungsgerichts* (Decisions of the Federal Administrative Court)
DÖV	*Die Öffentliche Verwaltung* (Public Administration)
DVBl	*Deutsches Verwaltungsblatt* (German Journal of Administration)
GBl	*Gesetzblatt* (official gazette [of *Länder*])
GVBl	*Gesetz- und Verordnungsblatt* (journal of legislative provisions, regulations, etc. [of *Länder*])
MDR	*Monatsschrift für Deutsches Recht*
NJW	*Neue Juristische Wochenschrift*

INTRODUCTION

This report is arranged broadly according to the order of human rights followed in the United Nations Declaration of 10 December 1948. The material reproduced here can give no more than a general impression; an exhaustive account of all developments would have required considerably more space. The selection of judicial decisions, in particular, has been based on the principle that the scope and limitations of the various rights of the individual are most clearly demonstrated through specific cases.

1. PROTECTION OF HUMAN DIGNITY

(Universal Declaration of Human Rights, preamble and article 1)

The fundamental constitutional principle embodied in article 1, paragraph 1, of the Basic Law, namely, that it is the duty of all State authority to respect and protect the dignity of man, [2] besides being of decisive importance for the interpretation of all other basic rights, was

[1] Report prepared by Dr. Klaus Wilhelm Platz, *Referent* at the Max Planck Institute for Foreign Public Law and International Law, Heidelberg.

[2] Wherever the term "Basic Law" is used in the following pages, the reference is to the 1949 Constitution of the Federal Republic of Germany. Extracts therefrom appear in the *Yearbook on Human Rights for 1949*, pp. 79-84.

again directly invoked as the basis for many judicial decisions during 1965, the year under review.

Thus, the *Land* High Court at Düsseldorf ruled (23 November 1965, *NJW* 1966, p. 214), on the basis of relevant decisions of the Federal Court of Justice, that a person making a tape recording of a conversation without the permission of the other party was violating the general right of personality guaranteed by articles 1 and 2 of the Basic Law, by which the individual's right to personal privacy was protected. The mere fact that it was in someone's interest to obtain evidence for the purpose of pursuing a civil-law claim did not justify the secret recording of the conversation. Consequently, such a recording could not be used in penal or investigative proceedings against the other party without his permission, nor could evidence regarding the substance of the conversation be taken from witnesses to whom the recording has been played. In a judgement of 13 May 1965 (*NJW* 1965, p. 1677), however, the *Land* High Court at Celle held that the secret recording of a conversation was not, in exceptional cases, unlawful if the other party was himself pursuing unlawful ends through the conversation and if the purpose of the recording was to obtain, in a situation to which considerations of self-defence could be said to apply, definite proof of what had taken place. In such circumstances, secret tape-recording might be the proper means whereby the person making the recording could protect his own personality, which the other party had failed to respect.

In a judgement of 19 February 1965 (*NJW* 1965, p. 1934), the Administrative Court at Neustadt-an-der-Weinstrasse ruled that the person concerned was legally entitled to have photographs, finger-prints and descriptive records which the police had produced during their investigations for the use of the criminal identification department destroyed as soon as it was clear that the investigations could not result in his being convicted. To keep photographs and finger-prints of anyone in police files without cause was incompatible with article 1, paragraph 1, of the Basic Law—"the highest constitutional principle of German law"—and with the dignity of man to which it afforded protection. Where, as in this case, there was a conflict between the responsibility of the police for combating crime in the future and the right of every blameless citizen to preserve his personal privacy, the citizen's interest in the elimination of such records must prevail.

The Federal Court of Justice ruled (19 January 1965, *BGHSt* 20, p. 143; *NJW* 1965, p. 770) that the provision of the Penal Code under which any person convicted of perjury must be permanently disqualified from giving evidence or expert testimony on oath did not violate either article 1 of the Basic Law or article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[3] Such disqualification was not punitive, but was designed solely to prevent persons who had deliberately perjured themselves and had been punished for doing so from taking the oath in any future proceedings. It could not be said that a person who had been convicted of perjury was being "branded" when he was not allowed to take the oath in subsequent proceedings and his previous conviction was thus disclosed in court. Any unfavourable comment to which he might be exposed in his neighbourhood or among his acquaintances was due, not to his being disqualified from taking the oath, but to the fact that he had incurred punishment for perjury.

2. THE PRINCIPLE OF EQUAL TREATMENT

(Universal Declaration, articles 2 and 7)

In a decision of 16 February 1965 (*BVerfGE* 18, p. 366; *NJW* 1965, p. 683; *DVBl* 1965, p. 438), the Federal Constitutional Court ruled that the provision of the Employment Exchanges and Unemployment Insurance Act excluding persons employed by their parents from unemployment insurance violated the principle of equality embodied in article 3, paragraph 1, of the Basic Law. The Act itself laid down the principle that all employees subject to compulsory health insurance were entitled to the protection afforded by unemployment insurance. The exclusion of persons employed by their parents constituted a departure from the objective statutory criterion for which the Act itself had opted, and such a departure could not be allowed to stand in face of the principle of equality unless the arguments in favour of it were of a cogency commensurate with the seriousness of the exception which was made. That was not so in the case in question

The Federal Constitutional Court ruled (12 January 1965, *BVerfGE* 18, p. 288) that the Act compensating public servants for injuries suffered under National Socialism violated the principle of equality by establishing different rates of compensation and different starting-dates for candidate lawyers who had passed the first State law examination and had then been refused admission to the State preparatory service as junior law officers (*Referendare*) because of persecution, on the one hand, and junior law officers who had been dismissed from the State preparatory service for the same cause, on the other. The court held that the decisive criterion for determining whether the difference in the compensation arrangements for the two groups could be allowed to stand in face of the general principle of equality was whether the distinction made by the legislator could be convincingly justified on objective grounds or whether it involved arbitrarily unequal treatment of essentially similar cases. As the two cases were, in

[3] For the text of the European Convention for the Protection of Human Rights and Fundamental Freedoms, see *Yearbook on Human Rights for 1949*, pp. 420-426.

this instance, "essentially similar", the fact that one group, but not the other, had been members of the public service when the wrong had been done to them was not a convincing ground for the distinction which the legislator had made between the two groups.

In a decision of 13 July 1965 (*BVerfGE* 19, p. 101; *NJW* 1965, p. 1581; *DVBl* 1965, p. 643), the Federal Constitutional Court held that the retail branch establishments tax—a form of the business tax—violated the principle of equality. The purpose of a special business tax, additional to the income tax and the corporation tax, was to compensate municipalities for the special burdens and expenditures imposed on them by the presence of business establishments. It was not permissible to tax anyone more heavily, simply because he was not of local origin; any discrimination against outsiders must be based on objective grounds which could be deduced from the nature and purpose of the tax in question. It was incompatible with the principle of equal taxation implicit in article 3, paragraph 1, of the Basic Law that a maldistribution of tax revenues among municipalities should be rectified through the imposition of a heavier burden on particular categories of taxpayers in the less fortunate municipalities. On a point of law affecting the public service, the Federal Constitutional Court ruled (1 June 1965, *BVerfGE* 19, p. 76) that it was unjustifiable on objective grounds, and therefore incompatible with the principle of equality, that certain categories should be excluded from an upward salary revision for fear that their inclusion would subject the employer to financial burdens which, instead of being specifically costed, were stated, purely as a conjecture, to be "almost incalculable". In another case relating to the public service, the Federal Administrative Court held (6 May 1965, *BVerwGE* 21, p. 81) that, while a provision under which certain benefits were denied to a particular category of staff might be invalid because it violated the principle of equality generally, it must not be interpreted as conferring on those who had been passed over an equal entitlement to benefits on grounds of equality before the law.

As was pointed out by the Federal Administrative Court in its judgement of 30 April 1965 (*BVerwGE* 21, p. 58; *NJW* 1965, p. 1545), the prime importance of the principle of equality in connexion with judicial remedies resides in the protection it affords against arbitrary regulations. The court held that in areas of commerce where quotas were restricted—in this case, interzone trade—any protection against arbitrary regulations was as a rule unrealistic unless it included equality of opportunity for all competitors in respect of the granting of government licences. In such instances, what protection against arbitrariness really amounted to was concern for equality of opportunity.

In a judgement of 5 February 1965 (*BVerwGE* 20, p. 235; *NJW* 1965, p. 1099), the Federal Administrative Court ruled that, where attendance at lectures given by a visiting professor attached to a university medical faculty could be counted as part of the attendance required for admission to the State examination, such lectures should bear the same indication to that effect in the university lecture list as those delivered by the occupant of the chair or, by agreement with him, by another lecturer. The principle of equality was violated if, in the case of a visiting professor, the fact that attendance at his lecture would be accepted by the State examining authority as a qualification for admission to the State examination was not indicated, even though the lecture was equivalent, both in subject-matter and as a qualification for the examination, to one delivered by the occupant of a university chair.

3. PROTECTION AGAINST ARBITRARY DEPRIVATION OF LIBERTY

(Universal Declaration, articles 3, 4 and 9)

The Act amending the Code of Criminal Procedure and the Judicature Act of 19 December 1964 (*BGBl* 1964 I, p. 1067) came into force on 1 April 1965 in accordance with article 18 of the Act, and the amended version of the Code of Criminal Procedure was promulgated on 17 September 1965 (*BGBl* 1965 I, p. 1374). One of the main purposes of the amendments is to limit both the imposition and the duration of detention pending investigation to the fullest extent compatible with the public interest. The principle of reasonableness, which has been applied in essence in the past, is given strong emphasis. Thus, the Act specifically provides (Code of Criminal Procedure, article 112, paragraph 1, second sentence, and article 120, paragraph 1, first sentence) that detention pending investigation may not be ordered or, when it has been ordered, may not be continued if it is disproportionate to the significance of the case or to the punishment or measure of prevention and reform likely to be imposed. The grounds on which detention pending investigation may be ordered have also been more stringently formulated. Article 112, paragraph 2, of the Code of Criminal Procedure states that a ground for detention exists if, on the basis of definite facts, it is established that the accused was in the act of escaping or in hiding or, in view of the circumstances of the case, in particular the private situation of the accused and the circumstances with regard to an escape, there is a danger that the accused may evade criminal proceedings (danger of flight) or it is clear that the accused intends to destroy, alter, remove, suppress or falsify evidence, improperly influence accomplices, witnesses or experts, or induce others to do so, with the result that there is a danger of his making it more difficult to ascertain the truth (danger of tampering with the evidence). A ground for detention also exists in the case of certain serious sexual offences clearly specified in the Code, such as rape or indecent acts involving children, if definite facts indicate that there is a danger that the accused may commit a further offence of the kind specified before final judgement has been rendered and his detention is necessary in order to avert the impending danger (Code of Criminal Procedure, article 112, paragraph 3).

Apart from these four grounds—flight, danger of flight, danger of tampering with the evidence and (in the case of sexual offences) danger of repetition—article 112, paragraph 4, of the Code of Criminal Procedure provides that an accused person may be detained pending investigation only if he is strongly suspected of a serious offence against human life (murder, manslaughter or genocide).

The amending Act also imposes on the judge issuing an order for detention more stringent requirements as concerns his obligation to state the grounds for detention in writing. Under article 114 of the Code of Criminal Procedure, the order, besides identifying the person accused and indicating the factual and statutory elements of the offence, must specify the material considerations on which the ground for detention is based. The Act also requires that the facts on the basis of which the accused is strongly suspected of having committed the offence should be stated.

In addition, the amending Act seeks to encourage the existing practice of suspending the execution of an order for detention. Paragraph 116 of the Code of Criminal Procedure, as amended, is based on the assumption that, even where a ground for detention exists, the purpose of detention pending investigation can often be achieved by less drastic measures. In this connexion, the Act makes no distinction in principle as to the ground for detention—whether danger of flight, danger of tampering with the evidence or both, or the newly introduced ground, danger of repetition. The only ground for detention not mentioned in article 116 is that specified in article 112, paragraph 4, of the Code, namely, strong suspicion of a serious offence against human life (but cf. the decision of the Federal Constitutional Court of 15 December 1965, cited below). The Act gives some examples of less drastic measures enabling execution of the order to be suspended, including, in the event of a danger of flight, an obligation to report, an obligation to remain within a certain area, house arrest, and the furnishing of security, and, in the event of a danger of tampering with the evidence, an order not to communicate with accomplices, witnesses or experts.

Although the amending Act prescribes no rigid time-limit for detention pending investigation, article 121, paragraph 1, of the Code of Criminal Procedure expresses a desire on the part of the legislator that such detention should not continue after the court of first instance has rendered judgement and that, wherever possible, its duration should not exceed six months. This insistence on a minimum of delay is reinforced by article 121, paragraph 2, which provides that the detention order shall be vacated at the end of the six-month period unless execution has been suspended under the terms of article 116 or the *Land* High Court orders a continuation of detention pending investigation. The *Land* High Court retains this sole power to rule on the continuation of detention until such time as the court of first instance has rendered judgement. Under article 122, paragraph 4, of the Code a ruling that detention shall be continued must be reviewed every three months. Detention pending investigation for more than six months in respect of one and the same offence may be confirmed only if, owing to the peculiar difficulty or scope of the investigations or for some other material reason, judgement cannot yet be rendered and a continuation of detention is justified (Code of Criminal Procedure, article 121, paragraph 1). This is not, however, the only criterion to be applied by the *Land* High Court in its review; the court must first consider whether grounds for detention no longer exist or detention now disproportionate (article 120) and whether execution can be suspended (article 116).

With the above exception, a review of detention is now, under article 117 of the amended Code of Criminal Procedure, normally initiated only at the request of the accused. It is hoped that the frequent delays under the old system, which required *ex officio* reviews of detention at regular intervals, can thus be avoided. As long as the accused is detained pending investigation, he may at any time seek a judicial review to determine whether the detention order should be vacated or execution suspended. Apart from the extraordinary review at the end of six months, to which reference has already been made, an *ex officio* review of detention is now required only if the accused has no defence counsel and, although detained for three months, has neither sought a review of his detention nor lodged an appeal (*Beschwerde*) against the detention order itself (Code of Criminal Procedure, article 117, paragraph 5).

These changes in the law relating to detention pending investigation were the subject of a number of reported court decisions during the year under review; owing to lack of space, only a few of the more important rulings can be recorded here.

The Federal Constitutional Court held (15 December 1965, *BVerfGE* 19, p. 342; *NJW* 1966, p. 243) that, in keeping with the constitutional principle of reasonableness, execution of a detention order might be suspended even in the case of an order based on article 112, paragraph 4, of the Code of Criminal Procedure (serious offences against human life). Although the law made no specific provision for such action, it could be deduced by analogy from article 116 of the Code of Criminal Procedure, which provided for suspension of execution in the case of the other grounds for detention. The relationship of tension which existed between the constitutionally guaranteed right of the individual to freedom of person and the imperative requirements of effective criminal prosecution could be clearly seen in the institution of detention pending investigation. Total deprivation of personal liberty through confinement in a place of detention was an evil which, in a State based on the rule of law, could as a matter of principle be inflicted only on a person on whom final judgement had been pronounced for an act punishable by law. The application of such a measure to someone who was as yet merely sus-

pected of a criminal act could not be permissible, except in a severely limited number of exceptional cases—a conclusion which resulted also from the presumption of innocence to which any accused person was in principle entitled. An acceptable resolution of this conflict between two principles of equal importance to a State based on the rule of law could be achieved only if the restrictions on freedom which appeared necessary and expedient from the standpoint of criminal prosecution were tempered by continual reference to the accused, but not yet convicted, person's right to his freedom. This meant that the principle of reasonableness must govern the issuance and execution of orders for detention pending investigation. Recent evolutions of the law, especially the United Nations Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, conformed to those principles. The principle of reasonableness had the status of constitutional law in the Federal Republic of Germany. It derived from the notion of a State based on the rule of law and, in the final analysis, from the nature of the basic rights themselves which, being the expression of the citizen's general entitlement to liberty vis-à-vis the State, might be limited by the authorities in individual cases only to such an extent as was essential for the protection of community interests. It followed that, notwithstanding the law's silence on the point, suspension of detention must be possible even where there was a strong suspicion of homicide.

The *Land* High Court at Frankfurt ruled (7 April 1965, *NJW* 1965, p. 1342) that the probability of a heavy penalty did not in itself justify detention on the ground of danger of flight. Even where there was a propensity to commit sexual offences, danger of a repetition before final judgement was rendered did not constitute a ground for detention, at least in a case where the accused had not committed any further offence during a suspension of detention.

In a decision of 9 September 1965 (*NJW* 1965, p. 2361), the *Land* High Court at Bremen held that the exceptional circumstances in which the *Land* High Court could order a continuation of detention beyond the time-limit of six months laid down in article 121, paragraph 1, of the Code of Criminal Procedure must be narrowly interpreted. In particular, difficulty in constituting the court because judges were sick or on leave was not an important reason for continuing detention. The *Land* High Court at Frankfurt ruled (12 July 1965, *NJW* 1965, p. 1731) that, if the papers in the case were not submitted to the *Land* High Court until after the six-month time-limit had expired, the court must at least suspend execution of the detention order, if not quash the order altogether. However, a contrary ruling was given by the *Land* High Court at Hamm (18 October 1965, *NJW* 1965, p. 2312).

The District Court at Stuttgart ruled (1 September 1965, *NJW* 1966, p. 791) that an accused person summoned to appear at a judicial hearing prior to the trial itself must not be forcibly brought before the court. The action of the accused in absenting himself without excuse would normally indicate that he did not wish to make any statement concerning the case, and that was his privilege under the law. It was not permissible to bring him to court unless it was essential to do so in order to obtain statements which he was required by law to make, with a view, for instance, to establishing his identity.

In its judgement of 29 June 1965 (*BGHSt* 20, p. 232), the Federal Court of Justice ruled that an accused person suffering from schizophrenia could not be committed to an institution by means of the protective proceedings which form part of criminal procedure if he was found guilty only of two acts of petty fraud while in dire need. Although it appeared from the evidence before the lower court that the responsibility of the accused might have been diminished by his illness, with the result that he was quite likely to commit further punishable, and even violent, offences, the case was not one in which committal could be justified, bearing in mind the principle that the measure taken must not be disproportionate to the offence.

Conditions for deprivation of liberty outside the sphere of criminal procedure proper were also strictly prescribed by the legislator. Thus, article 1, paragraph 1, of the Act of 12 August 1965 concerning the use of direct coercion and the exercise of special powers by members of the armed forces and civilians on guard duty (*BGBl* 1965 I, p. 796) provides that any person may be stopped, examined, provisionally detained and searched by members of the armed forces assigned to military guard or security duties, in the lawful performance of such duties and in accordance with the provisions of the Act. Under article 6 of the Act, a person who is strongly suspected of a criminal offence against the armed forces and who has been brought before the guard commander or taken to an armed forces post may be provisionally detained only if delay would be dangerous and the conditions specified in the Code of Criminal Procedure for the issuance of a detention or committal order are satisfied. The person detained must, if he is not released, be handed over to the police without delay. Article 14 of the Act provides that a person who is provisionally detained may be handcuffed only if there is a danger that he may attack other persons or if he offers resistance; if he attempts to escape or if, in view of all the facts, including personal circumstances, with regard to an escape, there is reason to fear that he may escape from custody; or if there is a danger of suicide.

4. THE RIGHT TO PHYSICAL INTEGRITY

(Universal Declaration, article 3 and 5)

Decisions concerning the right to physical integrity during the year under review, related primarily to the taking of blood samples from persons suspected of drunken driving.

In a judgement of 19 November 1965 (*NJW* 1966, p. 416), the *Land* High Court at Cologne ruled that the taking of a blood sample consti-

tuted a legally unjustified violation of physical integrity unless it was performed by a physician. The term "physician" meant in this context a licensed medical practitioner, but not a *Medizinalassistent* (a person who has passed the State medical examination but is undergoing further training in a hospital before receiving a licence to practise). The taking of a blood sample by a *Medizinalassistent* could be deemed to have been performed by a physician only if it was performed under the guidance and supervision of a full-time practising physician and on his responsibility. Nevertheless, the fact that a blood sample had been taken by a *Medizinalassistent* although it constituted a violation of the right of physical integrity, did not necessarily mean that the sample could not be used as evidence in criminal proceedings, especially if it had been obtained without the use of physical coercion. Similar rulings were made by the *Land* High Court at Hamm (8 April 1965, *NJW* 1965, p. 1089) and the *Land* High Court of Bavaria (3 November 1965, *NJW* 1966, p. 415).

5. JUDICIAL AND ADMINISTRATIVE GUARANTEES OF DUE PROGRESS

(Universal Declaration, articles 8 and 10)

This section of the report deals with the subject indicated in the heading but does not include any mention of points of law connected with criminal procedure, which are discussed in section 6.

With a view to securing uniformity of judicial process in the sphere of tax law, the federal legislator adopted the Finance Courts Ordinance on 6 October 1965 (*BGBl* 1965 I, p. 1477). Under article 1 of this statute, financial jurisdiction is exercised by special independent administrative courts, known as "finance courts", which are distinct from the administrative authorities. Article 33 declares the finance courts competent in public-law disputes regarding taxation matters, provided that the taxes in question are subject to federal legislation and are administered by federal or *Land* financial authorities; in public-law disputes regarding the execution of administrative acts, provided that under the *Reich* Taxation Ordinance such acts to be executed by federal or *Land* financial authorities and no other legal remedy is expressly provided; in law disputes concerning the legal position with regard to professional assistance in taxation matters; and in such other public-law disputes as federal or *Land* legislation may provide.

In direct application of article 19, paragraph 4, of the Basic Law, which provides that any person whose rights are infringed by public authority shall have recourse to the courts, the Federal Administrative Court and the Federal Disciplinary Court declare that certain lawsuits concerning the public service were admissible. Thus, the Federal Administrative Court ruled (13 May 1965, *BVerwGE* 21, p. 127; *DVBl* 1965, p. 650) that a public servant whose superior had made a wrongful report on his performance of his duties could seek legal remedy in the administrative courts. Performance reports vitally affected a public servant's career, especially in the matter of promotion. Consequently, the report itself was calculated to infringe his rights if it was wrongful—for example, if it was based not on objective considerations but on personal whim or factual error — and it could not be argued that his status was not affected until actual measures, such as compulsory retirement or denial of promotion, were taken against him as a result of the report. For similar reasons, the Federal Disciplinary Court concluded (18 June 1965, *DVBl* 1965, p. 651) that a remedy against disparaging observations by a superior could be sought in the disciplinary courts, at least in a case where the observations, including an allegation of an offence against service regulations, had been put in writing and placed in the personnel files.

In its judgement of 30 June 1965 (*NJW* 1965, p. 2222), the Federal Social Court held that an administrative ruling confirming, on resubmission, the earlier rejection of an application for a pension could be challenged in the social courts. While it was true that there was a clause in the *Reich* Insurance Ordinance declaring that such decisions were final, the provision in question had since been superseded both by the entry into force of the Basic Law, article 19, paragraph 4, of which provided that any person whose rights were infringed by public authority should have recourse to the courts, and by the general clause establishing the jurisdiction of the social courts.

The Federal Constitutional Court ruled (11 May 1965, *BVerfGE* 19, p. 49; *NJW* 1965, p. 1267) that the principle of a lawful hearing (article 103, paragraph 1 of the Basic Law) must be observed even in cases under voluntary jurisdiction if a decision was being reversed on appeal to the respondent's disadvantage. Although the Voluntary Jurisdiction Act did not provide that the respondent should be heard, the obligation to hear him followed directly from article 103, paragraph 1, of the Basic Law. The principle involved meant that the respondent must be heard, at least in cases where his legal position would be adversely affected if the appeal was allowed.

The principle of a lawful hearing also applies to appeals in proceedings relating to the taxation of legal costs. In a judgement of 9 April 1965 (*NJW* 1965, p. 1602), the Berlin High Court (*Kammergericht*) held that, in accordance with article 103, paragraph 1, of the Basic Law, a court must hear the respondent before reaching a decision at the appeal stage of such proceedings. Failure to observe this principle constituted negligence and provided grounds for a claim of official liability. In its decision of 25 January 1965 (*NJW* 1965, p. 1550), the *Land* Labour Court at Frankfurt applied the principle of a lawful hearing in connexion with a provision of the Code of Civil Procedure under which a litigant who is excused payment of costs under the legal aid system must make good the sum involved as soon as he is in a position to do so without depriving himself and his family of their

essential subsistence. The *Land* Labour Court held that in the proceedings relating to such reimbursement the court could not base its decision regarding reimbursement on an official report unless it had first acquainted the litigant in question with the content of the report and given him an opportunity to comment on it. Failure to follow this procedure was in itself sufficient to invalidate a reimbursement order on the ground of denial of a lawful hearing.

During the year under review, application of the principle that no one may be removed from the jurisdiction of his lawful judge (article 101, paragraph 1, second sentence, of the Basic Law) once again resulted in the quashing of a number of judgements on the ground that the court had been improperly constituted. Thus, the Federal Constitutional Court ruled (5 October 1965, *BVerfGE* 19, p. 145) that the judgement of a *Land* High Court was not rendered by the "lawful judge" if, under the plan for distribution of court business, a presiding judge and five judges of the *Land* High Court had been assigned to the chamber hearing the case as regular members. The chamber had been so heavily overstaffed that its members had been able to form two separate teams, each of which had conducted proceedings and delivered judgements. Such overstaffing should never be necessary in the interests of the administration of justice, and there were accordingly no circumstances in which it could be reconciled with the guarantee of a lawful judge. Thus the judgement in question was based on a procedural defect which violated the appellant's right, guaranteed by the Basic Law, to the jurisdiction of his lawful judge, and it must be set aside and the case remitted to the *Land* High Court. In its judgement of 25 June 1965 (*NJW* 1965, p. 1715), the Federal Court of Justice ruled that, where the civil chamber of a *Land* High Court consisted of five members in addition to the presiding judge, the court was improperly constituted even if one member of the chamber was prevented by sickness from performing his duties. The *Land* High Court at Bremen held (14 April 1965, *NJW* 1965, p. 1447) that even the replacement for a district court judge's usual deputy must be designated by some purely mechanical criterion in the plan for distribution of court business. It was not permissible to assign particular court-days, over a comparatively brief period of time, to judges specified by name.

The judgement of the Federal Social Court of 21 July 1965 (*NJW* 1965, p. 2422) concerning a blind judge's participation in court business involved no departure from earlier decisions. It was held that in social court proceedings, as in any others, a court was not as a general rule improperly constituted because a blind judge participated in its work even at the fact-finding stage. Nor was the court, generally speaking, improperly constituted if it proved necessary, as an exceptional measure, for a blind judge to preside when the regular president was unable to do so. The only cases where that did not apply were those in which evidence had to be "inspected" or the outward demeanour of one of the parties or of a witness or expert was of crucial importance.

6. DUE PROCESS IN CRIMINAL PROCEEDINGS

(Universal Declaration, articles 10 and 11)

The amended version of the Code of Criminal Procedure promulgated on 17 September 1965 (*BGBl* 1965 I, p. 1374), to which reference has already been made in section 3 above, introduced, in addition to a reform of the law relating to detention pending investigation, many other ameliorations in the legal position of accused persons. One of the innovations was a concluding hearing of the accused, to be conducted by the State Counsel's Department as soon as its investigations have been completed (Code of Criminal Procedure, article 169b). If the department intends to initiate a public prosecution by preferring charges, it must inform the accused and his defence counsel of the completion of the investigations and give them an opportunity to state within a specified time whether they wish to apply for certain evidence to be obtained or to enter objections to the preferment of charges. Article 169b provides that within the same time the accused may apply for an oral hearing with respect to the result of the investigation; and it is this hearing which is styled the concluding hearing. If the accused has a defence counsel, the latter is also entitled to participate in, or to represent the accused at, the concluding hearing. The accused and his defence counsel must be notified of the right to apply for a concluding hearing at the same time as they are informed of the completion of the investigations. If, however, the State Counsel's Department intends to prosecute in the lay-judge court, it is obliged to grant a concluding hearing only where this appears appropriate because of the nature and extent of the charges or for other reasons.

Under article 140 of the Code of Criminal Procedure, as amended, mandatory defence by counsel is extended considerably. A provision not found in previous legislation makes the participation of defence counsel mandatory in cases tried at first instance by the senior penal chamber of the *Land* Court. Mandatory defence by counsel for accused persons who are not at liberty has also been extended considerably. Article 141, paragraph 3, of the Code gives a strong impetus to the appointment of defence counsel during preliminary proceedings and, indeed, makes it obligatory in cases where there may be a concluding hearing and where factual and legal considerations will make the participation of defence counsel mandatory. Under article 142, paragraph 2, of the amended Code, the only persons other than attorneys who may be appointed to act as defence counsel are *Referendare*, and then only subject to certain limita-

tions. Article 147 now gives defence counsel the right in principle to inspect files and official exhibits even during the investigatory proceedings. Under article 148 of the Code, the accused, even if he is not at liberty may communicate orally and in writing with his defence counsel. In future, the prison authorities will exercise no supervision, other than to ascertain that the person visiting the accused is in fact his defence counsel and that written correspondence is actually to or from the latter.

At the beginning of the first examination by the police, by the State Counsel's Department or by a judge, the accused must, as soon as his particulars have been recorded, be informed of the offence which he is believed to have committed. Before the accused is questioned regarding the matter, it must always be pointed out to him at the first examination that he is legally entitled to answer the accusation or to remain silent. Accused persons had this right in the past, of course, but the difference is that they must now be informed of it even at the police inquiry stage. It must also be pointed out to the accused at his first examination that he is entitled "at any time, and even before his examination, to consult defence counsel of his choice". Article 163a, paragraph 1, of the Code of Criminal Procedure provides that in "simple matters" the accused, instead of being questioned, may in future be given the opportunity to make a written statement. The accused must be informed of this option.

New rules for the disqualification and challenging of judges have also been laid down. Under article 23, paragraph 2, of the Code of Criminal Procedure, any judge who participated in a contested decision is now disqualified by law from participating in the decision at the appeal stage. Article 25 of the Code has been significantly amended. Where previously the trial judge could not be challenged on the ground of possible bias after the examination of the defendant concerning the charge had been concluded, he may now be challenged, for reasons that do not arise until a later stage of the trial, at any time up to the conclusion of the final statement by the defence.

The guarantee of a lawful hearing before the courts has also been strengthened. Articles 33a and 311a of the Code of Criminal Procedure provide that any court which consciously or through inadvertence fails to grant a lawful hearing before reaching a decision must subsequently, if the resulting disadvantage to the person concerned still subsists, either *ex officio* or upon application grant such a hearing and review its decision, even where no appeal lies.

The right to a lawful hearing (article 103, paragraph 1, of the Basic Law) in criminal proceedings was the subject of several decisions by the Federal Constitutional Court during the year under review. For instance, in a ruling of 5 October 1965 (*BVerfGE* 19, p. 142) it was held that under the terms of article 103, paragraph 1, of the Basic Law a court could base its decision only on those facts and items of evidence on which the person adversely affected by the decision had a prior opportunity to comment. The court whose decision was the subject of the complaint to the Federal Constitutional Court was found to have failed to meet that requirement when it had taken into account the results of the police investigations at the scene of an accident without the complainant's having first been informed of them. Another ruling by the Federal Constitutional Court (24 March 1965, *BVerfGE* 18, p. 419) concerned preventive detention of a dangerous habitual criminal. According to this decision, a person in preventive detention who is refused parole is entitled, under article 103, paragraph 1, of the Basic Law, to comment on the facts on which the refusal is based. Unless the court itself hears him concerning the facts, the prisoner must be given an opportunity to comment at least on the factual part of the prison's report. In its decision of 11 May 1965 (*BVerfGE* 19, p. 32), the Federal Constitutional Court ruled that the right to a lawful hearing had been violated when the victim of a criminal offence was not informed of a report by the State Counsel's Department on the basis of which a court rejected his application for an order to compel public prosecution of the offender. In a decision of 9 March 1965 (*BVerfGE* 18, p. 399; *NJW* 1965, p. 1171) the Federal Constitutional Court ruled that, in appeal proceedings against a court order for the seizure of goods, the person affected had the right to a lawful hearing. Article 103, paragraph 1, of the Basic Law was violated if the appellant's legal representative was not allowed to inspect the case files as he was entitled by law to do or if, the appellant having reserved his grounds of appeal in the justified expectation of a ruling on his application to inspect the files, the court unexpectedly gave its judgement on the appeal itself without first ruling on the application.

The *Land* High Court at Saarbrücken, applying the principle of the lawful judge (article 101, paragraph 1, second sentence, of the Basic Law) to criminal proceedings came to the conclusion, in its judgement of 2 December 1965 (*NJW* 1966, p. 1041), that, where the plan for distribution of the business of a district court having more than one judge made no reference to juvenile-court cases, such cases must be regarded as not having been distributed. It followed that the district court in question had no juvenile court, and a juvenile on whom it had pronounced sentence had been removed from the jurisdiction of his lawful judge. Nor could it, in the case under review, be assumed by analogy that criminal-court judges who tried cases of a given kind had jurisdiction in the corresponding juvenile-court cases. The *Land* High Court at Saarbrücken also ruled (15 September 1965, *NJW* 1966, p. 167) that the clause in the amended Code of Criminal Procedure (see above) disqualifying any judge who had participated in a decision from participating in subsequent appeal proceedings applied not only to the proceedings themselves but also to a decision on whether leave to appeal should be granted. The *Land* High Court at Bremen gave a similar ruling (21 December 1965, *NJW* 1966, p. 605), stating

that the letter and spirit of the Code of Criminal Procedure required that the disqualification should apply to all decisions made, without exception, in any subsequent proceedings. In a judgement of 10 November 1965 (*NJW* 1966, p. 512), the *Land* Court at Ulm, in interpreting the provision of article 354, paragraph 2, of the Code of Criminal Procedure under which a case remitted by a higher court must be dealt with by a chamber other than the one that had originally heard the case, held that the word "other" could not be applied to a chamber which, although differently designated, was composed of the same judges whose decision had been set aside. If, under the plan for distribution of court business, a judge of the original chamber had in the meantime become a member of the "other" chamber to which the case was remitted, he should not be deemed unable to participate, provided that the chamber was composed predominantly of judges who had not participated in the contested decision.

Every accused person must be considered innocent until proved guilty in public court proceedings. Consequently—the Federal Court of Justice ruled in its judgement of 26 February 1965 (*BGHSt* 20, p. 208)—if there are no material facts pointing to the defendant's guilt and the trial judge merely adduces general grounds for suspicion which he infers from the defendant's character but which do not relate to the charge itself, there are no "reasonable grounds for suspicion" within the meaning of a provision of the Code of Criminal Procedure under which the defendant, although acquitted, may be ordered to pay the costs of the proceedings. In a judgement of 26 October 1965 (*BGHSt* 20, p. 281; *NJW* 1966, p. 208), the Federal Court of Justice held that the fact that a defendant had made no answer to the accusation against him when examined by the police but had reserved his remarks until his examination by the judge could not be taken into account in appraising the evidence. The same court ruled on 3 December 1965 (*BGHSt* 20, p. 298; *NJW* 1966, p. 210), however, that conclusions unfavourable to the defendant might be drawn from his refusal to assist in clarifying one particular point if, at least, he had not refused to answer the other questions put to him.

The inadmissibility of evidence which is improperly obtained was also the subject of a number of decisions during the year under review. The Federal Court of Justice ruled (31 August 1965, *BGHSt* 20, p. 384; *NJW* 1966, p. 740) that, if a man whose wife was on trial availed himself of his legal right not to give evidence against her, statements made by him at a previous trial in which he himself had been the defendant could not be used in evidence. The *Land* High Court of Bavaria held (8 July 1965, *NJW* 1966, p. 117) that, if a witness acquired a right to refuse to testify after having already been examined by a judge and if he availed himself of that right at the trial, evidence regarding his earlier statement could not be taken from the examining judge. In its judgement of 9 December 1965 (*NJW* 1966, p. 605), the Berlin High Court ruled that nothing was implied by the mere fact that a witness refused to testify, since his refusal could be variously interpreted. No investigation of the motives underlying such a refusal was permissible.

The *Land* High Court at Cologne ruled (13 November 1965, *NJW* 1966, p. 606) that the rejection of an application for a judicial inspection constituted a breach of the duty to clarify the facts, if the purpose of the application was to invalidate evidence which rested on statements made by a witness who had testified concerning the circumstances that would be the object of the inspection. The Federal Court of Justice held (7 May 1965, *BGHSt* 20, p. 222) that, while the fact that an expert had been successfully challenged on the ground of bias did not prevent him from testifying concerning facts which he had learnt in the course of his appointed task, it did disqualify him from stating the conclusions which he, as an expert, had drawn from those facts and on which the court was relying in order to reach its decision.

7. PROTECTION AGAINST INTERFERENCE WITH PRIVACY

(Universal Declaration, articles 6 and 12)

In the words of the Constitution (article 5, paragraph 2, of the Basic Law), the basic right to free expression of opinion is limited by, *inter alia*, the right to personal honour. Protection of honour is afforded primarily by the provisions of the criminal law concerning defamation and as the Federal Constitutional Court pointed out in its decision of 25 May 1965 (*NJW* 1965, p. 1371), a finding of defamation duly arrived at by the courts actualizes the constitutional bounds of the free expression of opinion in any given instance.

The Federal Administrative Court ruled (30 April 1965, *DVBl* 1965, p. 647; *NJW* 1965, p. 1450), that a person described in a police report as a notorious complainer was in principle entitled to know the substance and the source of the statements on which that disparaging value judgement was based, inasmuch as the statements constituted an attack on his honour and thus on his human dignity which, under article 1, paragraph 1, of the Basic Law, it was the duty of all State authority to respect and protect. If it was impossible to disclose the informant's name because he had remained anonymous, at least the blot on the good name of the person concerned might be removed if the latter sought an order for the withdrawal of the police report.

In its judgement of 12 October 1965 (*NJW* 1965, p. 2395), the Federal Court of Justice reaffirmed its consistent rulings that anyone whose right of personality had been gravely and culpably violated might claim monetary compensation for non-material damage from the person responsible, if the injury suffered could not be made good in any other way. The courts had the power, and indeed the duty, to place that broad interpretation on the law concerning compensation for non-material damage, in order that the principles enunciated in article 1 and in

article 2, paragraph 1, of the Basic Law should be reflected in the protection afforded to the human personality. In a similar ruling of 15 January 1965 (*NJW* 1965, p. 1374), the same court held that the right to one's own picture was a segment, specially protected by express legal provisions, of the general right of personality, whose purpose was the protection of personal privacy, to which articles 1 and 2 of the Basic Law attributed particular importance. If that right was violated and the moral damage suffered could not be made good in any other way, monetary compensation might be sought.

8. THE RIGHT TO FREEDOM OF MOVEMENT; FREEDOM TO LEAVE THE COUNTRY; THE LAW RELATING TO PASSPORTS

(Universal Declaration, article 13)

The Aliens Act of the Federal Republic of Germany, adopted on 28 April 1965 (*BGBl* 1965 I, p. 353), makes it considerably easier for aliens to enter the country, and article 19 of the Act provides that they are free to leave the country. An alien may be prohibited from leaving only if he endangers the security of the Federal Republic, if he is evading criminal prosecution or the enforcement of a sentence, if he commits a breach of the law concerning taxation, Customs or foreign trade, or if he is attempting to evade a maintenance obligation or the performance of a contract with the public authorities. The prohibition must be rescinded as soon as these grounds cease to exist.

Under the implementing order of 10 September 1965 (*BGBl* 1965 I, p. 1341), certain persons are no longer required to be in possession of a passport and documents of many kinds are recognized as valid in lieu of passports.

9. THE RIGHT OF ASYLUM; EXPULSION; EXTRADITION; PROTECTION OF REFUGEES

(Universal Declaration, article 14)

The constitutional provision of article 16, paragraph 2, second sentence, of the Basic Law, whereby the politically persecuted enjoy the right of asylum, was given tangible statutory form in Section Four of the above-mentioned Aliens Act of 28 April 1965 (*BGBl* 1965 I, p. 353). Refugees within the meaning of article 1 of the Geneva Convention relating to the Status of Refugees, and other aliens who are victims of political persecution, are recognized as being entitled to asylum. The question of recognition is decided in special proceedings before the Federal Board for the Recognition of Alien Refugees. The applicant must be present throughout the proceedings. The sessions of the recognition committees of the Federal Board are not open to the public, but duly authorized representatives of the Federation, of the *Länder*, of the United Nations High Commissioner for Refugees or of the Council of Europe's Special Administrator for Refugee Questions are entitled to participate. A protest (*Widerspruch*) may be lodged against the decision of a recognition committee; if the protest is rejected, recourse may be had to the administrative courts. Aliens who are allowed to remain in a reception camp must be given the opportunity to communicate with the United Nations High Commissioner for Refugees. Aliens recognized under this Act enjoy the status provided for in the Convention relating to the Status of Refugees or a similar status.

The law concerning expulsion is dealt with in articles 10 *et seq.* of the new Aliens Act. Article 10 gives a detailed enumeration of the grounds for expulsion, but article 11 goes on to specify that an alien who has acquired residential rights may normally be expelled only if he endangers the libertarian democratic basic order or the security of the Federal Republic of Germany or has been convicted of any but a petty offence; his expulsion on one of the other grounds may be ordered only in circumstances of unusual gravity. Aliens who enjoy the right of asylum as victims of political persecution, stateless aliens and alien refugees may, if they are lawfully resident in the territory to which the Act applies, be expelled only for grave reasons of public safety or public policy. Under article 14 of the Act, an alien may not be deported to a State in which his life or his liberty would be in jeopardy because of his race, religion, nationality, membership of a particular social group or political opinion. The States, if any, to which an alien may not be deported must be specified in the notification of intended deportation.

The Administrative Court at Mannheim held (29 June 1965, *NJW* 1966, p. 365) that a residence prohibition order purporting to require the immediate departure of the complainants from the territory of the Federal Republic was unconstitutional. The Basic Law entitled the complainants not to have their statutory access to the courts restricted and not to be prevented by the mode of official action from taking advantage of the legal remedies available to them. In a decision of 3 February 1965 (*NJW* 1965, p. 1141), the *Land* High Court at Karlsruhe ruled that detention pending deportation might be ordered only if the deportation of the person concerned could not be assured by other measures less restrictive of his personal freedom, and that it must be terminated if its continuation would infringe his personal freedom unduly and to an extent no longer compatible with the principles of a State based on the rule of law or would be disproportionate to the importance of his deportation.

With respect to the law concerning extradition, the Federal Court of Justice, in its judgement of 22 June 1965 (*NJW* 1965, p. 1672), once again upheld the principle of speciality. The court ruled that a person who had been extradited by Switzerland to face a charge of fraudulent conversion could not instead be convicted of breach of trust, at least where the proven facts of the case revealed no criminal

act analogous to fraudulent conversion or otherwise constituting under Swiss law a ground for extradition. In a similar ruling of 12 March 1965 (*NJW* 1965, p. 1146), the Federal Court of Justice held that, where the one offence committed by a person who had been extradited by the Netherlands for the purpose of criminal prosecution constituted a violation of two penal laws and extradition had been granted only in consideration of one of them, the other could not be applied unless, under the terms of the German-Netherlands Extradition Agreement, extradition would also have had to be granted solely in consideration of the violation of that other law.

10. THE RIGHT TO A NATIONALITY

(Universal Declaration, article 15)

The Federal Minister for Foreign Affairs announced on 20 March 1965 (*BGBl* 1965 II, p. 272) that the Federal Republic of Germany had accepted the jurisdiction of the International Court of Justice in disputes arising out of the Optional Protocol concerning Acquisition of Nationality of 18 April 1961 (*BGBl* 1964 II, p. 957). The jurisdiction of the Court was recognized in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court.

In a judgement of 15 November 1965 (*NJW* 1966, p. 317), the Constitutional Court at Munich ruled that the renunciation of German nationality acquired by collective naturalization before 1945 did not entail loss of the legal status of a German not possessing German citizenship which is provided for in article 116, paragraph 1, of the Basic Law, where a German within the meaning of the Basic Law is defined as a person who possesses German citizenship or who has been accepted in the territory of the German *Reich*, as it existed on 31 December 1937, as a refugee or expellee of German ethnic stock or as the spouse of descendant of such person. With respect to the renunciation of that legal status, the provisions relating to release from German citizenship must be applied *mutatis mutandis*.

11. PROTECTION OF THE FAMILY

(Universal Declaration, article 16)

With respect to the solemnization of marriages, the Federal Court of Justice ruled (22 January 1965, *BGHZ* 43, p. 214; *NJW* 1965, p. 1129) that, although a priest of the Greek Orthodox Church who was qualified under the rules of that church to officiate at marriage ceremonies was not, by virtue of that ecclesiastical authority, automatically empowered to solemnize marriages in Germany between Greek nationals of the Orthodox faith, he could do so if the Government of a State in which a religious marriage ceremony was recognized as having legal effect had certified to the Federal Republic that he was a clergyman authorized under the law of that State to officiate at marriage ceremonies in accordance with ecclesiastical law.

The law concerning the surnames of married persons was the subject of a judgement of the Federal Administrative Court (5 March 1965, *BVerwGE* 20, p. 300; *NJW* 1965, p. 1291) in a case where the wife's maiden name included what had formerly been a nobiliary particle. The court ruled that, where the married name was one that occurred very frequently and the wife added her maiden name to it, as she was legally entitled to do, there were cogent reasons for allowing the other members of the family also to use the double name, even if the wife's maiden name included what had formely been a nobiliary particle.

The *Land* Court at Darmstadt ruled (8 January 1965 *NJW* 1965, p. 1235) that a married woman who had not yet attained her majority could not lawfully be ordered to undergo supervised education (*Fürsorgeerziehung*). The supervisory authority had a right to educate only if that right had previously been vested in the legal guardian of the person concerned, and by statutory provision that was not so in the case of a married woman.

The Federal Constitutional Court had occasion to deal with the question whether a child who had hitherto lived with his grandparents in West Berlin should be handed over to the mother, who was resident in the Soviet-occupied zone, at her request. In its decision of 8 December 1965 (*BVerfGE* 19, p. 323; *NJW* 1966, p. 339) rejecting the constitutional complaint lodged by the grandparents, the court held that there were no constitutionally prescribed basic rights of grandparents which could be set against the right of parents under article 6, paragraph 2, of the Basic Law. The right to the care of their children which that clause confers on parents must also, the Federal Administrative Court ruled (27 January 1965, *BVerwGE* 20, p. 188), be taken into account in determining what constitutes the " personal income ", within the meaning of the Federal Social Assistance Act, of a person in need of assistance. When a mother spends the children's allowance granted to her on her child who has no income or property of his own, the amount of the children's allowance need not be deducted, as " personal income ", from the subsistence grant payable to the mother.

12. PROTECTION OF PROPERTY

(Universal Declaration, article 17)

The year under review saw the enactment of a number of statutes approving treaties concluded by the Federal Republic concerning the promotion and reciprocal protection of investments. These were the Act of 15 April 1965 approving the Treaty with Madagascar of 21 September 1962 (*BGBl* 1965 II, p. 369), the Act of 14 September 1965 approving the Treaty with Turkey of 20 July 1962 (*BGBl* 1965 II, p. 1193) in force as from 16 December 1965 (*BGBl* 1965 II, p. 1631), and the Acts of 29 September 1965 approving the Treaties with Tunisia of 20 De-

cember 1963 (*BGBl* 1965 II, p. 1377), with the Republic of Senegal of 24 January 1965 (*BGBl* 1965 II, p. 1391; in force as from 16 January 1966 [*BGBl* 1966 II, p. 10]) and with the Republic of the Niger of 29 October 1964 (*BGBl* 1965 II, p. 1402). The Treaty with Thailand of 13 December 1961 (*BGBl* 1964 II, p. 687) came into force on 10 April 1965 (*BGBl* 1965 II, p. 368) and the Treaty with Guinea of 19 April 1962 (*BGBl* 1964 II, p. 145) came into force on 13 March 1965 (*BGBl* 1965 II, p. 408). These treaties provide, *inter alia,* that nationals or companies of either party shall not be subjected to expropriation of their investments in the territory of the other party except for public benefit against compensation. The compensation must represent the equivalent of the investments affected, must be actually realizable and freely transferable and must be paid without undue delay. Adequate provision must be made at or prior to the time of expropriation for the determination and payment of the compensation. The legality of any such expropriation and the amount of compensation must be subject to review by due process of law (see, for example, article 3, paragraph 2 of the Treaty with Tunisia).

The Treaty of 21 April 1964 between the Federal Republic of Germany and the Empire of Ethiopia concerning compensation for German property in Ethiopia confiscated as a result of the Second World War was approved by an Act of 21 October 1965 (*BGBl* 1965 II, p. 1521). Under the terms of the Treaty, Ethiopia will pay a specified sum to the Federal Republic of Germany, which will distribute this amount among the claimants. On 21 April 1965, the Federal Republic concluded with the Commonwealth of Australia a Treaty regarding the Division between Germany and Australia of Compensation paid by the Government of the State of Israel for German Secular Property in Israel (Act of 17 September 1965 approving the Treaty [*BGBl* 1965 II, p. 1305]). In the Agreement with Israel of 10 September 1952 (annex 1 to the Treaty with Australia [*BGBl* 1965 II, p. 1316]), Germany had undertaken to protect the interests of former German nationals who had acquired Australian nationality.

There were a considerable number of judicial decisions concerning the protection of property during the year under review, and the report must therefore be confined to a few particularly striking examples. Perhaps one of the most important decisions in this sphere was the judgement of the Federal Court of Justice of 5 July 1965 (*NJW* 1965, p. 1907) on the question of compensation for interference with business caused by road works, particularly in connexion with the construction of an underground railway. The court stated that traffic restrictions and other impediments remained within the limits where they must be tolerated without compensation only if, in nature and duration, they did not exceed what was necessary in order for the works to be carried out methodically with the use of such material and human resources as was practical and reasonable. Even if those limits had been observed, however, the authorities might have to pay compensation for (lawful) expropriatory encroachment if any interest protected by law had been vitally affected by their actions. The owner of a property abutting on the street could expect to avail himself of the roadway only with due regard to the convenience of other users at any given time, which was subject to constant change. Consequently, he must tolerate inconveniences in the interest of other abutters, including, for instance, repair works but not, *prima facie,* the excavation of tunnels or cuts for an underground railway resulting in the almost complete ruination of his business.

In its decision of 8 July 1965 (*NJW* 1965, p. 1912), the Federal Court of Justice ruled that the action of a Building Control Office in unlawfully prohibiting the renting of roof space on a commercial building for the purpose of setting up an advertising sign could constitute an infringement of the rights of the owner of the property analogous to expropriation and therefore compensable, if such advertising devices were customary, permissible and possible in the vicinity of the building and if the renting of the space did not require any special additional expenditure by the property-owner or changes in the nature of his business. In its judgement of 14 July 1965 (*NJW* 1965, p. 2101; *DVBl* 1966, p. 306), the Federal Court of Justice held that restrictions on building and on the disposal of property in connexion with a town planning programme might become an expropriatory encroachment if the burden imposed on the property-owner was heavier and of longer duration than was required by the exigences of the programme. In another decision (29 November 1965, *NJW* 1966, p. 497), the Federal Court of Justice stated that, while future increases in the value of an expropriated property which would have occurred in the absence of expropriation and of the anticipatory effects of plans for expropriation were as a general rule to be disregarded in determining the amount of compensation, they must be taken into account in that connexion if at the time when expropriation was effected or anticipated their materialization was so clearly imminent that they already constituted factors in the formation of the value of the property and were reflected in the price then obtainable in the open real-estate market.

13. FREEDOM OF BELIEF AND FREEDOM OF RELIGIOUS PRACTICE

(Universal Declaration, article 18)

In what became known as the "school prayers case", the State Court of *Land* Hesse (27 October 1965, *NJW* 1966, p. 31) laid particular stress on the negative aspect of freedom of belief. The court noted that one essential component of the basic human right to freedom of belief and freedom of conscience, which transcended positive law and the authority of the State, was the right not to be compelled to participate in a religious exercise and not to disclose one's religious convic-

tions. That right was unconditional and universal, was neither restricted nor restrictable, and existed vis-à-vis the State as well as vis-à-vis other individuals. The basic right to freedom of religious *practice,* on the other hand, was guaranteed only within the limits imposed by the rights of others. The right to school prayers could not, therefore, prevail if as a result a pupil would be compelled either to participate in the prayers against his will or to make a public demonstration of his dissenting beliefs every day by not entering the class-room until the prayers were over.

The *Land* High Court at Saarbrücken ruled (18 November 1965, *NJW* 1966, p. 1088) that the basic right to freedom of belief must be preserved even in the case of a prisoner serving a sentence. That basic right included the right to make exploratory approaches to another denomination. It was therefore impermissible—except in case of abuse—to prohibit a Catholic prisoner from corresponding with the Mormon Church.

Under article 4, paragraph 3, of the Basic Law, a person has the right to refuse on conscientious grounds to perform military service as an armed combatant (cf. section 23 below). The Federal Administrative Court ruled in this connexion (17 December 1965, *NJW* 1966, p. 948) that a conscientious decision to refuse to perform military service as an armed combatant could also be the outcome of rational reflection, provided that it was solely an ethical postulate of his conscience which compelled the person liable to military service to refuse to perform such service.

In its decision of 4 October 1965 (*BVerfGE* 19, p. 129; *DVBl* 1966, p. 215), the Federal Constitutional Court held that the basic right to freedom of belief and freedom of conscience could be exercised not only by individuals, but also by religious associations and other bodies corporate whose purpose was to foster or promote a religious belief or to propagate the faith of their members.

14. THE RIGHT TO THE FREE EXPRESSION OF OPINION; FREEDOM OF INFORMATION; THE RIGHT OF PETITION

(Universal Declaration, article 19)

New laws relating to the Press were promulgated in six of the Federal *Länder* during the year under review. The *Länder* in question were Hamburg (Press Act of 29 January 1965 [*GVBl* 1965, p. 15]). Bremen (Act concerning the Press of 16 March 1965 [*GBl* 1965, p. 63]), Lower Saxony (Press Act of 22 March 1965 [*GVBl* 1965, p. 9]), the Saar (Press Act of 12 May 1965 [*ABl* 1965, p. 409]), Berlin (Press Act of 15 June 1965 [*GVBl* 1965, p. 744] and Rhineland-Palatinate (*Land* Press Act of 14 June 1965 [*GVBl* 1965, p. 107]). Under these Acts, which are largely identical in content, the freedom of the Press is subject only to such restrictions as are permitted by the Basic Law itself and, within the limits laid down in the Basic Law, by the Constitution and Press Act of the *Land* concerned. Emphasis is laid on the public role of the Press and on its right to information. Press activities may not be subjected to licensing of any kind. Special note should also be taken of the detailed provisions relating to the conditions on which printed matter may be confiscated and the right of journalists to refuse to testify.

Among the judicial decisions relating to the right to the free expression of opinion, special mention may be made of the judgement of the Federal Court of Justice of 8 November 1965 (*BGHSt* 20, p. 342; *NJW* 1966, p. 1227) in the Pätsch case. The court ruled that the basic right to the free expression of opinion included the right to criticize improprieties in public life, particularly violations of statutory and constitutional provisions by authorities with the object of putting a stop to them. If the criticism involved the ventilation of State secrets or official secrets, the critic would be guilty of an unlawful act unless he limited the disclosure to the minimum necessary and had recourse in the first instance to the department responsible and to the popular representative body before appealing to the public. In the case of serious offences against the libertarian democratic basic order, however, an immediate appeal could be addressed to the public. That applied equally to civil servants and employees of public authorities, notwithstanding their additional duty of fidelity.

The Higher Administrative Court at Münster ruled (27 July 1965, *NJW* 1966, p. 316) that an order prohibiting an alien from engaging in "any political activity" within the territory of the Federal Republic infringed upon the basic right to the free expression of opinion in its essential content and was therefore, by its generality, also incompatible with the principle of reasonableness as it applied to measures prescribed by administrative order.

15. PROHIBITION OF POLITICAL PARTIES AND ASSOCIATIONS

(Universal Declaration, articles 20, 21 and 30)

Under article 90a, paragraph 1, of the Criminal Code, any person who continues to conduct a political party which has been declared unconstitutional by the Federal Constitutional Court or in any other way maintains its organizational structure or establishes a substitute organization in its stead is guilty of a punishable offence. In connexion with this provision, the Federal Court of Justice ruled (12 October 1965, *BGHSt* 20, p. 287) that the "organizational structure" of a prohibited party was not being maintained in cases where the consorting together of former members although it in fact dated from their earlier adherence to the party, was based not on the desire to pursue aims that had led to its prohibition but on personal relationships, such as friendship or social intercourse. The fact that the relationships were based on the common political views of the former party members was not in itself sufficient to constitute the elements

of a statutory offence, since the holding of views could not be subject to penal sanctions in a State governed by the rule of law. The basic right of the members of a prohibited association to form associations and societies remained intact, so long as the new association did not continue to pursue the prohibited aims.

16. THE SUFFRAGE AND THE RIGHT OF SELF-DETERMINATION

(Universal Declaration, article 21)

On 8 April 1965, the Federal Minister of the Interior issued an Ordinance amending the Federal Elections Ordinance (*BGBl* 1965 I, p. 229); the Federal Elections Ordinance, as amended, was republished in the *Bundesgesetzblatt* (*BGBl* 1965 I, p. 240). The amendments relate only to matters of detail, such as the method of determining in which constituency a voter is to cast his vote if he removes shortly before an election, the opening of ballot-envelopes and the counting of votes both generally and in the case of postal voting, and the holding of a by-election if a candidate dies or the election is not held owing to *force majeure*. Minor amendments were also introduced to the Federal Verification of Elections Act of 12 March 1951 (*BGBl*, 1951 I, p. 156) by an Act of 24 August 1965 (*BGBl* 1965 I, p. 977).

On 25 February 1965, *Land* Berlin adopted an Act amending the *Land* Elections Act (*GVBl* 1965, p. 313), which, *inter alia*, introduces facilities for the exercise of the suffrage by persons who for material reasons are absent from their polling district during voting hours on the day of the election or who because of sickness, age, physical infirmity or any other physical condition are unable to go to the polling station or cannot do so without undue hardship. The Berlin *Land* Elections Order, which governs the procedure for elections to the House of Representatives and to district assemblies, was repromulgated in the amended version of 17 December 1965 (*GVBl* 1966, p. 113). The Hamburg Elections Order, concerning elections to the Hamburg Legislature and the election of district representatives to district assemblies, was amended in some particulars by an Ordinance of 20 July 1965 (*GVBl* 1965, p. 132). The *Länder* of Baden-Württemberg, Rhineland-Palatinate and Schleswig-Holstein introduced partial changes in their local election laws. The main feature of the Baden-Württemberg Act amending the Local Elections Act of 6 July 1965 (*GBl* 1965, p. 165) was the introduction of postal voting; innovations introduced by the Rhineland-Palatinate *Land* Act of 4 November 1965 amending the Local Elections Act (*GVBl* 1965, p. 223) were citizens' petitions and public hearings in the event of the dissolution of a municipality. In Baden-Württemberg the Local Elections Act (*GBl* 1965, p. 185) and the Local Elections Order (*GBl* 1965, p. 195), as amended in each case on 21 July 1965, were repromulgated, and in Schleswig-Holstein the Act concerning elections to the municipal and district assemblies, as amended on 11 September 1965 (*GVBl* 1965, p. 75), and the Municipal and District Elections Order, as amended on 15 November 1965 (*GVBl* 1965, p. 119), were repromulgated.

With respect to the right of self-determination, the Federal Court of Justice, in a judgement of 12 October 1965 (*NJW* 1966, p. 310), stated in connexion with dynamite plots in the South Tyrol that no person could argue before the courts of a State governed by the rule of law that he had been justified in seeking to give effect to the right of self-determination by force, even if that right had been promised by treaty. The "right of resistance" was restricted by the principle that the interests involved in any matter must be weighed against each other. That restriction was disregarded if plots were directed against disinterested third parties under colour of the right of resistance.

17. THE RIGHT TO THE FREE CHOICE AND EXERCISE OF A PROFESSION OR OCCUPATION

(Universal Declaration, article 23)

During the year under review, the Federal Constitutional Court added further to the series of decisions concerning freedom of profession or occupation which had begun with its judgement of 11 June 1958 in the "pharmacies case" (*BVerfGE* 7, p. 377; *NJW* 1958, p. 1035). According to the "gradation theory" laid down in that judgement, the legislator has power to make regulations affecting either the choice or the exercise of a profession or occupation, but not to the same degree in each case. Where the *choice* of a profession is concerned, an internal distinction must be made, in establishing restrictive standards for admission to a profession, between objective and subjective restrictions. Statutory regulations affecting the *exercise* of a profession are constitutionally permissible on a broader scale than the establishment of limits to the choice of a profession; as concerns the choice of a profession—which should be understood to include admission to a trade or profession—objective restrictions are compatible with the Basic Law on more narrowly defined terms than subjective restrictions.

This "gradation theory" underlies what was perhaps the most important decision concerning freedom of profession or occupation during 1965, namely, the ruling of the Federal Constitutional Court of 14 December 1965 (*BVerfGE* 19, p. 330; *NJW* 1966, p. 291; *DVBl* 1966, p. 73) with regard to the Act concerning the Exercise of Retail Trade. The court held that to require evidence of specialized knowledge of anyone wishing to set up business as a retail trader in general merchandise was incompatible with article 12 of the Basic Law, guaranteeing freedom of trade or profession. According to past decisions of the Federal Constitutional Court, article 12, paragraph 1, of the Basic Law must be construed as reflecting the fundamental idea that, in view of the special status of this particular basic right, which

derived from its close relationship to the free development of the human personality as a whole, such restrictions as were essential for reasons of the public good must be subjected to strict observance of the principle of reasonableness. Consequently, encroachments on freedom of profession or occupation must not go further than was necessitated by the community interests which justified them; the measures of encroachment must be appropriate to the end pursued and must not create an undue burden. Despite its title, the Act concerning the Exercise of Retail Trade regulated, not the exercise of a trade, but access to it. The requirement of specialized knowledge was a subjective condition for admission, since admission to the occupation of retailer was made dependent on the possession of specific knowledge, evidence of which was required in the form of a special course of instruction and, in principle, an examination also. Subjective conditions for admission were justified only for the protection of an important community interest, since they substantially restricted the free choice of a profession or occupation. For the legislator to require of every retailer evidence of equally extensive business knowledge in the form of stereotyped courses and examinations as a condition for even being admitted to the trade, whether the business involved was a small or petty one or a large department store, went far beyond the bounds of necessity. Only in exceptional cases could concern for the efficiency and social standing of an entire trade or profession justify the introduction of subjective conditions for admission to it. Although the Federal Constitutional Court had accepted that argument in the case of craftsmen (*BVerfGE* 13, p. 97; *NJW* 1961, p. 2011), the mere assertion of a broad public interest in the maintenance of "retail trade" could not, in all conscience, justify restrictions on basic rights.

In a decision of 28 May 1965 (*BVerwGE* 21, p. 195; *NJW* 1965, p. 1617), the Federal Administrative Court held that, in principle, the basic right to the free choice of an occupation included the freedom to decide whether to exercise two occupations at once, how long to exercise an occupation, and when to relinquish it. In another decision (1 June 1965, *BVerwGE* 21, p. 203; *NJW* 1965, p. 1778), the Federal Administrative Court ruled that there was no statutory basis for the introduction of a requirement that a licence should be obtained in order to operate a driving-school; the widow of the proprietor of a driving-school could therefore continue to operate the business bequeathed to her without any time-limit. Under the Ordinance concerning driving instructors of 23 July 1957 (*BGBl* 1957 I, p. 769), the heirs of the holder of a driving-school licence could continue to operate the business for a period of only three years, unless the heir himself passed the examination for driving instructors. The court acknowledged that a basic right was deemed to have been restricted "by legislation" even in cases where the restriction did not take effect until a subordinate instrument, the scope of which was circumscribed by the intent of the legislator (e.g., an ordinance), had been issued. The legal basis of the Ordinance concerning driving instructors was the authority vested in the Federal Minister of Transport by the Road Traffic Act to issue such regulations as were necessary for the maintenance of order and safety in road traffic. The legislator could not, however, by conferring broad powers for the prevention of accidents, delegate to the ordinance-maker the duty of setting the limits to the exercise of an occupation which was incumbent on the legislator himself under article 12 of the Basic Law and allow him to regulate the matter without detailed instructions.

The Federal Administrative Court ruled (12 March 1965, *BVerwGE* 20, p. 330; *NJW* 1965, p. 1242) that no licence under the Restaurants and Taverns Act was needed by a person who installed in business premises other than his own semi-automatic machines which, upon the insertion of a coin, dispensed freshly ground coffee that could be brewed on the spot with boiling water from a heating device. The court gave a similar ruling with respect to the offering of beverages in small amounts as free samples (12 March 1965, *BVerwGE* 20, p. 325; *NJW* 1965, p. 1243). In yet another decision of the same date (*BVerwGE* 20, p. 321; *NJW* 1965, p. 1244), the Federal Administrative Court held that an application for a temporary permit to operate a tavern could not be rejected on the ground that no need existed. Restrictions on the times at which a tavern could be operated, through the imposition of closing hours, were of course justified by the overriding considerations of the maintenance of public safety and public order and the protection of public health through the prevention of drunkenness, but restrictions on the number and the location of taverns, whether licensed or operating under a temporary permit, were not an effective means of achieving the public-health purposes of the Restaurants and Taverns Act. The rejection of an application for a temporary permit to operate a tavern on the ground that no need could be established was incompatible with the basic right to freedom of occupation.

In a decision of 22 November 1965 (*NJW* 1966, p. 689), the Federal Labour Court ruled that an agreement between the operator of a taxi-cab and his driver, designed to prevent competition, under which the driver would become liable to a penalty if, within three months after his employment was terminated "in any way", he accepted employment as a driver with another local taxi-cab operator was totally void as being contrary to public policy, since a taxi-driver's occupation was localized and compliance with the prohibition would make it practically impossible for him to exercise his occupation. The driver would incur a penalty if he exercised the free choice of his place of work, guaranteed to him in article 12, paragraph 1, of the Basic Law.

18. THE PROTECTION OF RIGHTS IN LABOUR LEGISLATION

(Universal Declaration, articles 23, 24 and 25)

Questions relating to the continued payment of salary in the event of sickness were dealt with in a decision of the Federal Labour Court of 6 May 1965 (*NJW* 1965, p. 1876). The court held that a clerical worker who had been sick and who, after becoming fit to return to work, had worked full-time for his employer for a further six months but had then taken recuperative leave granted to him because of his previous sickness with a view to maintaining and improving his ability to earn his livelihood was entitled to the payment of his salary for a further period of six weeks.

An Ordinance of 22 October 1965 (*BGBl* 1965 I, p. 1727) pursuant to the Children's Allowances Act of 14 April 1964 (*BGBl* 1964 I, p. 265) introduced improvements in the payment of children's allowances to foreign workers. Nationals of the five non-German member countries of the European Economic Community are now entitled to children's allowances even if they are domiciled or normally resident in their home countries. Coverage is also extended to those children who are domiciled or normally resident in the foreign worker's home country. A similar rule was laid down for Turkish and Portuguese workers. Children's allowances are also payable to German workers who are domiciled or normally resident in another EEC country or in Turkey or Portugal but are employed in the Federal Republic or West Berlin.

The Federal Labour Court ruled (5 November 1965, *NJW* 1966, p. 517) that a retailer who, on behalf of one of his establishments, had promised a retirement pension to a worker formerly employed there was normally liable to the full extent of his assets—not only those connected with the establishment or the enterprise, but also his personal asset—even if he closed down the establishment in question as unprofitable after the employee had retired. A promise to make such provision was not subject to the tacit proviso that the establishment in question should continue to be solvent and that the promised pension should be automatically adjusted in the light of the solvency of the establishment at any given time. In a decision of 12 March 1965 (*NJW* 1965, p. 1681), the Federal Labour Court held that a pension agreed upon by contract in 1926 could be adjusted to current conditions resulting from the decline in purchasing power if circumstances had changed so radically since 1926 that the original arrangement no longer conformed in any way to the intention of the contract.

The creation of satisfactory working conditions and the protection of workers is dealt with in the Ordinance of the Federal Minister for Scientific Research of 12 August 1965 (*BGBl* 1965 I, p. 759) amending and supplementing the First Ordinance concerning protection against radiation, which was repromulgated in its amended version of 15 October 1965 (*BGBl* 1965 I, p. 1653). The amending Ordinance establishes improved provisions with respect to the conveyance, storage, processing and use of nuclear fuels and the construction of test radiation and nuclear reactors. An Ordinance of 6 October 1965 (*BGBl* I, p. 1576) introduced more stringent technical requirements for lifts and hoists.

The Maternal Welfare Act of 24 January 1952 (*BGBl* 1952 I, p. 69) was amended by an Act of 24 August 1965 (*BGBl* 1965 I, p. 912) and was repromulgated in its amended version of 9 November 1965 (*BGBl* 1965 I, p. 1821). More stringent requirements are established with respect to conditions in places of work for expectant and nursing mothers, additional prohibitions are introduced on certain types of work, but the previous level of remuneration must be maintained when such prohibitions are complied with, and maternity services are improved; in particular, time off without loss of pay is to be granted for medical examinations. Any violation of the Ordinance by an employer is a punishable offence.

The Juvenile Workers Protection Act of 9 August 1960 (*BGBl* 1960 I, p. 665) was amended by an Act of 15 January 1965 (*BGBl* 1965 I, p. 11). The amendments provide that the working week for juveniles must not exceed the normal working week for adult employees of the same establishment and that juveniles must not work on any days when adult employees are not at work. On 16 October 1965, the Saar issued an Ordinance concerning the protection of juvenile government employees (*ABl* 1965, p. 857), which regulates working hours, attendance at vocational schools, rest periods and time off, and maternal welfare for juvenile government employees.

On the question of the right of a worker to proper holidays, the Federal Labour Court held (29 July 1965, *NJW* 1965, p. 2174) that the granting of leave in single half-days or hours off from time to time did not effectively satisfy a worker's entitlement to the statutory minimum vacation. That was so even if the leave was parcelled out in such a way by agreement between the employer and the worker. In its decision of 21 October 1965 (*NJW* 1966, p. 367), the Federal Labour Court ruled that, under the Federal Vacations Act, part-time workers were entitled to leave on the same terms as full-time workers and to a corresponding extent. In accordance with a decision of the Federal Labour Court of 3 November 1965 (*NJW* 1966, p. 612), the payment of holiday pay is not legally effected unless it consists of a specific amount, separate and distinguishable from other remuneration. A payment which violates this requirement does not discharge the statutory liability, even if the employee agrees to it.

The legal status and the functions of staff councils in public authorities and of works councils in private enterprises were the subject of a number of judicial decisions during the period under review. The legislator also devoted some attention to these questions. For instance, the Federal Employees Representation Act of 5 August 1955 (*BGBl* 1955 I, p. 477) was amended

by an Act of 13 January 1965 (*BGBl* 1965 I, p. 1), but the amendments related only to the terms of office of the members of a staff council and the prevention of accidents to employees. Staff representation at duty stations of the Federal Frontier Guard was introduced for the first time by an Act of 16 March 1965 (*BGBl* 1965 I, p. 68).

In its decision of 30 November 1965 (*BVerfGE* 19, p. 303; *NJW* 1966, p. 491), the Federal Constitutional Court held that the right of trade unions to canvass even on the premises and during working hours, within reasonable limits, prior to elections to the staff council was constitutionally protected. Freedom of association under the Basic Law assured to the members of an association the right to participate in the constitutionally protected activities of their association and afforded protection to an essential measure of group activity in staff representation matters. In accordance with a decision of the Federal Labour Court of 14 July 1965 (*NJW* 1965, p. 2366), the "down-grading" of a staff member from a higher to a lower salary grade is a matter to be determined jointly with the staff council concerned, whether the down-grading is by contract or by notification. The concurrence of the staff council, and observance of the regulations governing the procedure for obtaining such concurrence, are prerequisites for the validity of any legal transaction involving down-grading. In a decision of 5 February 1965 (*NJW* 1965, p. 1501), the Federal Labour Court ruled that the matters to be determined jointly with the works council in a private enterprise included the preparation of the leave schedule.

In a decision of 18 March 1965 (*NJW* 1965, p. 2302), the *Land* Court at Essen ruled that a minor who had taken a post with the consent of his legal representative did not need the latter's consent to join a trade union, unless the legal representative had qualified his original consent to that effect.

19. STATE CARE FOR PERSONS IN NEED OF ASSISTANCE

(Universal Declaration, articles 22 and 23)

By an Act of 13 September 1965, the Bundestag approved the Agreement of 30 April 1964 between the Federal Republic of Germany and the Republic of Turkey concerning social security (*BGBl* 1965 II, p. 1169); the Agreement came into force on 1 November 1965 (*BGBl* 1965 II, p. 1588). It regulates questions relating to insurance in the event of sickness, maternity, death, industrial accident or occupational disease, and invalidity, and also the payment of children's allowances in the case of nationals of either party who are domiciled or permanently resident in the territory of the other party.

In these matters, nationals of one party employed in the territory of the other party are to a large extent placed on an equal footing with the other State's own nationals; in particular, insurance periods completed under the legislation of one party are taken into account in calculating insurance periods under the legislation of the other party.

The Act approving the Agreement of 15 February 1964 with the Swiss Confederation on the same subject was adopted on 15 September 1965 (*BGBl* 1965 II, p. 1293). The Act approving the Agreement of 10 December 1964 on the Implementation of the Convention of 20 April 1960 with the United Kingdom of Great Britain and Northern Ireland on social security (*BGBl* 1965 II, p. 1273) and the Act approving the Agreement of 20 December 1963 with France on social security in respect of the Saar (*BGBl* 1965 II, p. 1287) were also adopted on that date. The Agreement with Spain of 15 May 1964 amending the Agreement of 29 October 1959 concerning social security (*BGBl* 1964 II, p. 913) came into force on 1 October 1965 (*BGBl* 1965 II, p. 1166).

On 31 March 1965, the Bundestag adopted the Act approving the Treaty of 16 May 1963 with the Spanish State concerning the welfare of war victims (*BGBl* 1965 II, p. 273). Under the terms of this Agreement, the Federal Republic of Germany will provide benefits under the German Act concerning the Welfare of War Victims (Federal Welfare Act) to Spanish nationals who, as members of the German armed forces or in a service-connected capacity, suffered any impairment of health as a result of harmful effects within the meaning of the Federal Welfare Act. The Treaty came into force on 1 June 1965 (*BGBl* 1965 II, p. 852). The Agreement of 17 December 1962 between the member States of the Council of Europe on the issue to military and civilian war-disabled of an international book of vouchers for the repair of prosthetic and orthopaedic appliances was approved by the Bundestag by an Act of 15 April 1965 (*BGBl* 1965 II, p. 383). The German instrument of ratification was deposited with the Secretary-General of the Council of Europe on 28 June 1965, and the Agreement accordingly came into force for Germany on 29 July 1965 (*BGBl* 1965 II, p. 1098).

There was also a considerable amount of purely domestic legislative action in the sphere of social welfare during the year under review. Some benefits under the Federal Social Assistance Act of 30 June 1961 (*BGBl* 1961 I, p. 815) were improved by the Act amending and supplementing the Federal Social Assistance Act of 31 August 1965 (*BGBl* 1965 I, p. 1027). An Act concerning the conveyance free of charge by local transport services of persons disabled in war or on military service and of other handicapped persons was adopted on 27 August 1965 (*BGBl* 1965 I, p. 978). The Third Act amending and supplementing the Act concerning old-age assistance to farmers of 13 August 1965 (*BGBl* 1965 I, p. 801) provides many improvements in benefits for the category of persons covered by the Act. In Rhineland-Palatinate, the *Land* Act concerning the welfare of attorneys of 22 July 1965 (*GVBl* 1965, p. 153) introduced an old-age and disability pension scheme for attorneys. Every attorney who is a member of one of the bar associations in Rhineland-Palatinate is a com-

pulsory member of the Rhineland-Palatinate Bar Associations Welfare Fund, which administers the newly created old-age and disability welfare scheme.

The Eighth Pensions Adjustment Act of 22 December 1965 (*BGBl* 1965 I, p. 2114) provided for increases in pensions under the statutory pension insurance and accident insurance schemes. With a view to mitigating hardships under the statutory pension schemes and improving other social welfare legislation, a Pension Insurance Amendment Act (*BGBl* 1965 I, p. 476) was adopted on 9 June 1965. The Housing Allowances Act was amended by an Act of 23 March 1965 (*BGBl* 1965 I, p. 140) and was republished in its amended version of 1 April 1965 (*BGBl* 1965 I, p. 177). Allowances are granted to persons who have to pay rents higher than the "bearable" rents and charges specified in the Act.

Only a few of the very many judicial decisions rendered during 1965 on questions relating to State care for persons in need of assistance can be cited here.

In a decision of 2 June 1965 (*DVBl* 1966, p. 282), the Higher Administrative Court at Hamburg held that, under the terms of the Social Assistance Act, subsistence allowances were not normally granted for an indefinite length of time, but only in the amount of the payment effected on each occasion; if assistance was discontinued, however, the administrative courts could provide temporary protection by means of an interim order. In a decision of 28 April 1965 (*NJW* 1965, p. 2317), the Federal Social Court ruled that a severely disabled person did not lose his right to medical treatment under the social welfare laws for a condition unconnected with his disability because his spouse's sickness insurance policy entitled other members of the family to sickness benefits.

In its decision of 26 November 1965 (*NJW* 1966, p. 450), the Federal Court of Justice held that an illegitimate child was fully entitled to claim maintenance from his father's heirs, irrespective of his entitlement to orphan's pension under the Federal Employees Insurance Act.

20. THE RIGHT TO EDUCATION

(Universal Declaration, article 26)

The European Convention on the equivalence of periods of university study of 15 December 1956, which had been approved by an Act of 22 September 1964 (*BGBl* 1964 II, p. 1289) came into force on 8 December 1964 in accordance with the notice published by the Federal Minister for Foreign Affairs on 26 February 1965 (*BGBl* 1965 II, p. 269). The European Convention on the Academic Recognition of University Qualifications of 14 December 1959 was approved by *Land* Hesse by an Act of 18 February 1965 (*GVBl* 1965, p. 35). Approval of agreements of this kind by the individual *Länder* of the Federal Republic is necessary because, under German law, the educational system, including the universities, is the responsibility of the *Länder*.

Article 1 of the Saar Educational System Act of 5 May 1965 (*ABl* 1965, p. 365) states that the schools have the duty of bringing up young people in reverence for God, in a spirit of love for one's neighbour and understanding among peoples, and in love for their homes, their fellow-countrymen and their native land, to be tolerant and respectful of the beliefs of others, morally and politically responsible, trustworthy in their work and in social life and libertarian and democratic in outlook. The purpose of education and upbringing is to train young people in such a way that they can discharge their family and community obligations.

On 26 February 1965, *Land* Lower Saxony concluded a Concordat with the Holy See, which was approved by the Landtag of Lower Saxony by an Act of 1 July 1965 (*GVBl* 1965, p. 191). Under the terms of the Concordat, instruction in the Catholic religion will form a regular part of the curriculum in public schools in the *Land*. The maintenance of Catholic denominational schools and the construction of new ones is guaranteed by the *Land*. Upon the proposal of parents or other persons *in loco parentis*, Catholic denominational schools will be built within the area covered by a local or supralocal education authority, provided that there is a clear assurance that the proposed school will be properly organized and that the interests of other schoolchildren in the same area will be protected. The *Land* will ensure that, where Catholic children attend other than Catholic denominational schools, the number of Catholic teachers will be substantially proportionate to the number of Catholic pupils. The Church will be entitled to participate in adult education, using its own facilities, which will receive a share of the financial provision made by the *Land* for the encouragement of adult education. In implementation of the Concordat, *Land* Lower Saxony adopted an Act to amend the Act concerning public education in Lower Saxony on 5 July 1965 (*GVBl* 1965, p. 205).

In Hesse, the major innovation brought about by the Act of 18 November 1965 amending the Hesse Compulsory School Attendance Act (*GVBl* 1965, p. 304) was the introduction of a nine-year period of compulsory full-time schooling. A new version of the Hesse Compulsory School Attendance Act incorporating the provisions of the amending Act was published on 1 December 1965 (*GVBl* 1965, p. 323).

During the year under review, three of the *Länder* of the Federal Republic adopted acts or issued ordinances regulating anew the purposes and activities of parents' councils for the schools. The purpose of these parents' councils is to protect the interests of parents and persons *in loco parentis* in educational matters, to encourage the educational work of the school and to foster relations between home and school. Parents must be given an insight into school affairs, primarily through free discussions with the principal and the teachers. Each parents' council is welcome to be present during lessons in classes attended

by the children of its members (article 1 of the Saar Ordinance concerning Activities of and Elections to Parents' Councils and Activities of the *Land* Educational Adviser of 14 December 1965 [*ABl* 1965, p. 1034]). These purposes were also afforded protection in Baden-Württemberg, where an Ordinance dated 1 April 1965 was issued by the Ministry of Education on the questions of parents' advisory councils, the *Land* parents' advisory council, and responsibilities for grading pupils and establishing curricula in public schools (*GVBl* 1965, p. 80). A *Land* Act of 18 November 1965 concerning parents' councils (*GVBl* 1965, p. 229) was adopted in Rhineland-Palatinate.

In North Rhine-Westphalia, from the start of the 1966-1967 school year, the *Land* will bear the cost of essential school supplies. This will be done under article 1 of the North Rhine-Westphalia Act of 29 June 1965 concerning the introduction and provision of free school supplies (*GVBl* 1965, p. 210). In this Act, the expression "school supplies" means necessary textbooks approved by the Minister of Education, introduced in individual schools and intended to be kept by pupils for their permanent use. Pupils will receive vouchers issued by the *Land*, which they will use in purchasing the textbooks for themselves.

21. PROTECTION OF CULTURAL PROPERTY, COPYRIGHT AND INDUSTRIAL RIGHTS

(Universal Declaration, article 27)

By an Act of 15 September 1965, the Bundestag approved the Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works, as revised at Brussels on 26 June 1948 (*BGBl* 1965 II, p. 1213). The Act approving the European Agreement of 22 June 1960 on the protection of television broadcasts was adopted on the same date (*BGBl* 1965 II, p. 1234). Under article 1 of this Agreement, which was concluded under the auspices of the Council of Europe, broadcasting organizations constituted in the territory and under the laws of a party to the Agreement or transmitting from such territory enjoy, in respect of all their television broadcasts, in the territory of all parties to the Agreement, the right to authorize or prohibit the rebroadcasting, diffusion to the public, fixation and reproduction of such broadcasts. The International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations was also approved on 15 September 1965 (*BGBl* 1965 II, p. 1243). The Convention is based on the principle that national treatment shall be granted to individuals and bodies corporate of the contracting States in the territory of the other contracting States.

After more than thirty years' work on copyright reform, the new Act concerning copyright and related rights of 9 May 1965 (Copyright Act) was promulgated on 16 September 1965 (*BGBl* 1965 I, p. 1273). The Act concerning the protection of copyrights and related rights (Disposal of Copyrights Act) was published at the same time (*BGBl* 1965 I, p. 1294). The Copyright Act strictly applies the principle, which has been upheld even in the past, that the author of the work is the sole copyright proprietor. Thus, the Act differs from earlier legislation in that it no longer recognizes bodies corporate as copyright proprietors. The relationship of joint copyright proprietors to each other, which in the past was regarded as a community by undivided shares, will in future be deemed to constitute co-ownership. While the unity of copyright is recognized, it is subdivided into three categories of rights: the personal right of the author (the right to recognition of authorship and the right to prohibit distortions of the work), disposal rights, and other rights, including in particular exhibiting and performing rights. Article 29 of the Copyright Act expressly states the principle, which was recognized even in the past, that copyright is inalienable and that only the exercise of it can be transferred. The "related rights" protected by the Act include scientific editions of works not protected by copyright, such as old texts, and the performances of performing artists. The Act also contains special provisions concerning films.

Among the judicial decisions relating to copyright, special mention may be made of the judgement of the Federal Court of Justice of 8 January 1965 (*NJW* 1965, p. 746) concerning the duty of a producer of magnetic tapes to include certain information in his advertising. The Court ruled that producers of magnetic tapes must indicate in their advertisements that the tapes could be used to record copyright musical works only with the consent of the Society for Musical Performance and Mechanical Reproduction Rights (GEMA), even if the indication would not prevent violations of the law with a degree of probability bordering on certainty. It sufficed that such an indication might help to reduce the risk of violations and could reasonably be required of the advertiser.

22. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS

(Universal Declaration, article 28)

Agreements concluded by the Federal Republic in 1965 on matters affecting the protection of human rights have been dealt with in this report under the relevant headings. It may be added here that the European Convention on Establishment of 13 December 1955 (*BGBl* 1959 II, p. 997) came into force for the Federal Republic of Germany on 23 February 1965 (*BGBl* 1965 II, p. 1099) and the European Social Charter (*BGBl* 1964 II, p. 1261) on 26 February 1965 (*BGBl* 1965 II, p. 1122).

23. SPECIAL DUTIES TO THE COMMUNITY

(Universal Declaration, articles 29 and 30)

The Basic Law, in its present form, does not provide an effective constitution in case of emergency. The creation of such an emergency constitution would require a constitutional amendment or the insertion of additional clauses, and no action has thus far been taken because the major political forces in the Federal Republic have never been able to agree on the content and scope of such clauses. However, a number of laws which made provision for emergency situations and did not require the majority needed for the adoption of a constitutional amendment were enacted in 1965. Thus, the federal legislator adopted on 12 August 1965 an Act concerning the Civil Defence Corps (*BGBl* 1965 I, p. 782), on 24 August 1965 an Act concerning the safeguarding of commercial and banking services (Commercial Safeguards Act) (*BGBl* 1965 I, p. 920), an Act concerning the safeguarding of transport (Transport Safeguards Act) (*BGBl* 1965 I, p. 927), an Act concerning the safeguarding of food, agricultural and timber supplies (Food Safeguards Act) (*BGBl* 1965 I, p. 938) and an Act concerning the safeguarding of water supply services for defence purposes (Water Supply Safeguards Act) (*BGBl* 1965 I, p. 1225), and on 9 September 1965 an Act concerning construction measures for the protection of the civilian population (Protective Construction Act) (*BGBl* 1965 I, p. 1232) and an Act concerning self-protection for the civilian population (Self-Protection Act) (*BGBl* 1965 I, p. 1240).

The Civil Defence Corps Act, the Protective Construction Act and the Self-Protection Act, in particular, impose on the individual special duties to the community. The purpose of the Civil Defence Corps is to protect the civilian population against the hazards and injuries which might be caused by weapons of attack. Its membership includes both volunteers and persons liable to military service who are conscripted under the Civil Defence Corps Act. Under article 2 of the Protective Construction Act, anyone erecting a building must provide shelters for the persons who normally live or work in the building. Under the Self-Protection Act, the head of every household must obtain and keep at hand an emergency supply of food sufficient for fourteen days, for himself and the members of his household, and must also have ready a stock of water for the same length of time. Property-owners must provide black-out arrangements and certain tools and equipment in their buildings.

The Military Service Act was amended by an Act of 26 March 1965 (*BGBl* 1965 I, p. 162) and the amended version of 14 May 1965 was published (*BGBl* 1965 I, p. 390). One of the new provisions is that a person liable to military service who is in an age group currently being called up must normally obtain permission from his military service board if he wishes to leave the area of application of the Act for more than three months.

The Act concerning Civilian Service performed in Lieu of Military Service was also amended, by an Act of 28 June 1965 (*BGBl* 1965 I, p. 531), and the amended version of 16 July 1965 was published (*BGBl* 1965 I, p. 983). Under the new article 12b of the Act, a person performing civilian service in lieu of military service must respect the libertarian democratic basic order, in the sense in which the expression is used in the Basic Law, in all his conduct; under article 13, he must not jeopardize harmonious working conditions or communal life at duty stations, he must accept service-connected hazards, especially when this is necessary in order to save the lives of others or prevent injuries to the public, and he must undergo training if the purposes of the civilian service so require. The new article 13a requires the conscript not to disclose certain official secrets, even after he has left the service.

In its decision of 4 October 1965 (*BVerfGE* 19, p. 135; *NJW* 1965, p. 2195; *DVBl* 1965, p. 874), the Federal Constitutional Court upheld the constitutionality of the requirement that a person refusing to perform military service should perform alternative civilian service. Article 12, paragraph 2, fourth sentence, of the Basic Law provides that the details of the alternative service shall be regulated by a law which shall not prejudice freedom of conscience. The court held that this proviso concerning freedom of conscience referred not to the obligation to perform alternative service as such but to the detailed regulations, which were not challenged by the appellant. Nor could the appellant base his case against the obligation to perform civilian service in lieu of military service, which was expressly stated to be permissible in article 12, paragraph 2, of the Basic Law, directly on the fact that freedom of conscience was guaranteed in article 4, paragraph 1, of the Basic Law, since the effects of freedom of conscience in connexion with the obligation to perform military service were conclusively regulated by paragraph 3 of the latter article, which provided that no one might be compelled against his conscience to perform military service as an armed combatant.

Under article 8 of the Fire Services Act of *Land* Berlin, which was adopted on 21 December 1965 (*GVBl* 1965, p. 1977), any person over eighteen years of age is required, in the event of a fire, explosion, flood, accident or other similar emergency to render assistance or perform fire-fighting or rescue duties if called upon to do so by the fire officer in charge. The person called upon may, however, refuse to perform such duties if they are beyond his physical capacity, if they would endanger his life or involve the risk of substantial physical injury or impairment of his health, or if they would prevent him from discharging other urgent and important duties.

In a decision of 5 August 1965 (*NJW* 1965, p. 170), the Federal Administrative Court ruled that a law requiring property-owners to clean

the pavement in front of their premises did not infringe the constitutional prohibition of forced labour. The obligation to clean the pavement only meant that the owners must keep in proper condition something which did not belong to them—namely, the pavement, which was usually the property of the municipality—and they were left to decide for themselves how they would discharge that obligation. The law did not require property-owners to do the work themselves; it simply made them responsible for the proper condition of the pavement. Consequently, property-owners were free to discharge their obligation by having the necessary work done by the caretaker or tenants of the property or by a cleaning firm.

FINLAND

NOTE [1]

I. LEGISLATION

RIGHTS RELATING TO FAMILY

Inheritance Act No. 40, of 5 February 1965, (*Suomen Asetuskokoelma,* hereinafter referred to as *AsK,* Official Statute Gazette of Finland, No. 40/65) revises the provisions concerning inheritance and will. The previous provisions on these subjects were contained in the codification of 1734 as amended subsequently.

In substance, the most important innovations of the new Act consist of the limitation of the scope of relatives entitled to inheritance on the one hand, and of the extension of the right to inheritance to the spouse of the deceased on the other. Furthermore, the administration of estate and the distribution of inheritance have been regulated by the new Act in accordance with the practical needs of today.

Since ethical and economic ties among relatives have loosened as a result of the general social development, the scope of relatives entitled to inheritance has been limited so that cousins and farther relatives of the deceased are excluded from inheritance. If there are no closer relatives, the estate comes into possession of the State.

The right to inheritance has so far been granted only to relatives of consanguinity. Thus, the spouse of the deceased has not been entitled to inheritance but only to a so-called marital portion of the property of the other spouse. On the ground of this right, the surviving spouse has been entitled to get one half of the balance of the property of both spouses, provided that no other arrangement was made by a so-called marriage settlement or by a deed of gift or by will.

According to the new Act, the surviving spouse is entitled to inheritance in case there are no heirs in direct descent. In such a case the estate of both spouses shall be divided among their heirs, in accordance with the legal inheritance order, after the death of the surviving spouse. If there are heirs in direct descent, the surviving spouse is entitled to a marital portion as before.

As regards the administration of estate and the distribution of inheritance, the heirs may take care of them by themselves as before but they also have a possibility to have an administrator ordered by the court for this purpose. If anyone of the heirs is under age or otherwise under guardianship, or if the portion of the estate belonging to one of the heirs is subject to distraint, or if anyone of the heirs so requires, the distribution of the estate shall be performed by an administrator ordered by the court.

The provisions concerning will have been completed by the new Act. As before, a person who has reached the age of majority and who has no heirs in direct descent may freely dispose of his property by will. Similarly, a person under age having reached the age of fifteen years may dispose by will of the property earned by himself. A person having heirs in direct descent may not violate by will the right of such heirs to a so-called legal portion which is equivalent to one half of the value of their shares of the estate according to the legal inheritance order.

The new Act contains, in addition, detailed provisions on the interpretation of a will and on the protest against it as well as provisions of practical and technical nature concerning both inheritance and will and the administration of estate.

SPECIAL CARE AND ASSISTANCE FOR CHILDHOOD

Act No. 432, of 23 July 1965, on Securing the Maintenance of Children in Certain Cases (*AsK* No. 432/65).

This Act replaces Act No. 614, of 20 August 1948, on the same subject. The new Act contains more detailed provisions than the previous one purporting to secure the maintenance of children in cases when the father or the mother of a child or, in the case of a child born out of wedlock, another person under maintenance obligation has failed to support the child so that the payments of alimony in arrear amount to a sum corresponding to at least the alimony due for three months. In such a case the County Government, at the proposal of the appropriate Social Board, may order the liable person to be put to a workhouse to earn the money needed for the payments in arrear either in total or in part as the County Government may consider reasonable, provided that the child is not more than sixteen years of age.

The liable person shall not be ordered to a workhouse if he makes the payments in arrear

[1] Note prepared by Mr. Voitto Saario, Justice of the Supreme Court of Finland, government-appointed correspondent of the *Yearbook on Human Rights.*

or gives an acceptable security for them or proves that the reason for his failure is unemployment which is not his fault or inability to work, illness or bodily defect, or if it otherwise would be senseless or unreasonable.

When there is reason to fear that a person liable to maintenance of a child endangers it by leaving the country, the County Government may, at the request of the Social Board, forbid the person to leave the country if he does not give a security acceptable to the County Government for the payments of alimony.

The prohibition order shall not be issued if it would cause unreasonable harm to the liable person by impeding his work or otherwise, or if the child has already reached sixteen years of age.

If a husband or a wife or a woman who has given birth to a child out of wedlock, being in work, fails to support his/her child, the Social Board, having heard the person in whose custody the child is and after having given the liable person a chance to give his/her comments, may order a certain portion of his/her salary to be paid to the person designated by the Social Board to be used for the maintenance of the child.

The supervision and execution of this Act is vested in the Ministry for Social Affairs.

Rights relating to work

Act No. 713, of 30 December 1965, on the Amendment of the Act on Working Hours, of 2 August 1946 (*AsK* No. 713/65).

According to the new Act, the regular amount of working hours of an employee in a business enterprise or establishment, where one or more employees are working for an employer under his direction and supervision, is eight hours a day and forty hours a week. According to the previous Act, the permitted amount of weekly working hours was forty-seven.

The daily regular working time may, if agreed upon in advance, occasionally be prolonged at most by one hour, provided that the weekly working time during at most a three weeks period is forty hours in average.

In certain exceptional cases enumerated in the Act the matter can be arranged so that, irrespective of the daily working time, the working hours during a three weeks period amount to at most one hundred and twenty hours or during a two weeks period to at most eighty hours. According to the previous Act, the maximum amount of working hours during a three weeks period was one hundred and forty-one.

The unions of employers and employees may agree upon certain exceptions to these provisions, provided that the average working hours do not exceed forty hours a week.

An employee may, at his consent, be kept at overtime work in addition to the daily regular working time, at most for twenty hours during a two weeks period. According to the previous Act, the permitted amount of overtime work was twenty-four hours respectively.

In addition to the overtime work just mentioned, an employee may, at his consent, be kept at weekly overtime work at most for sixteen hours during a two weeks period, provided that the regular daily working time is not exceeded.

In certain exceptional cases where the daily working time is irregular but the working hours for a three or two weeks period are fixed as mentioned above, an employee may, at his consent, be kept at overtime work at most for thirty-six hours during a three weeks period or for twenty-four hours during a two weeks period.

As before, the overtime work shall be compensated by increased remuneration so that the increase for the two first hours exceeding the daily regular working time is fifty per cent and for the subsequent hours one hundred per cent.

The new Act contains some additional provisions which improve the position of employees.

II. INTERNATIONAL AGREEMENTS

1. Decree No. 269, of 21 May 1965 (*AsK* No. 269/65) brings into force the International Convention for the Safety of Life at Sea, signed in London on 17 June 1960.

2. Decree No. 386, of 23 June 1965 (*Ask* No. 386/65) brings into force the Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents, signed by Finland, Denmark, Norway, Sweden and the International Atomic Energy Agency in Vienna on 17 October 1963.

FRANCE

DEVELOPMENT OF HUMAN RIGHTS IN 1965 [1]

Following the reform of the system of guardianship, the gradual revision of the principal institutions of the Civil Code is proceeding with a thorough reform of matrimonial property systems.

There has also been a change in the rules of civil procedure which relates to the organization and proper administration of justice: the creation of an office of judge responsible for preparing suits for hearing.

The new Code of Military Justice places great emphasis on respect for individual rights.

The social measures to which attention should be drawn concern family housing and measures adopted for the benefit of persons affected by changes in agrarian economic structures.

CIVIL AND INDIVIDUAL RIGHTS

Matrimonial property systems

As part of the gradual recasting of various chapters of the Civil Code, the Act of 13 July 1965 [2] instituted a far-reaching reform of the matrimonial property systems.

The new provisions amend book I, chapter VI, on "The rights and duties of the spouses" and the rules both of the statutory community of property established in the absence of a marriage settlement and of the contractual systems. One of the main ideas behind this reform is to achieve the emancipation of women by allowing them to use and personally administer their separate property, particularly professional earnings, and making legal action by their husbands unnecessary in most cases.

The new articles 222, 223, and 224 of the Civil Code read as follows:

"*Art. 222.* Where a spouse appears without the other to execute an instrument for the administration, use or disposition of personal property which he holds individually, he shall be deemed, in so far as third persons in good faith are concerned, to have the power to execute this document without the other spouse. . . .

"*Art. 223.* The wife shall be entitled to engage in an occupation without her husband's consent, and where it is required by this occupation, she may at any time, without her husband, alienate and bind the complete title to her separate property.

"*Art. 224.* Each spouse shall appropriate his earnings and wages and may dispose of them freely after he has discharged the marriage expenses.

"The property that the wife acquires through her earnings and wages by engaging in an occupation separate from her husband's shall be reserved for her administration, use and free disposition, subject to observance of the restrictions imposed on the respective powers of the spouses by articles 1425 and 1503. . . ."

It should be added, however, that even while the texts were being drafted many jurists expressed reservations about the effect of the new provisions, emphasizing in particular that the limitation of the wife's statutory mortgage, the loss of her right to renounce the community upon her husband's death and the fact that the community no longer has the usufruct of the separate property might expose the wife, in exchange for her emancipation, to greater financial risks than did the former system.

Another innovation is the abolition of the rule laid down in old article 1395 that matrimonial property agreements could not be changed. The new article 1397 states:

"After the contractual or statutory matrimonial property system has been applied for two years, the spouses may agree in the interests of the family to amend it, or even to change it entirely, by an instrument drawn up by a notary which shall be submitted for ratification to the tribunal of their domicile. . . ."

Lastly, instead of the "domestic agency" presumed to be tacitly granted by the husband to his wife for the management of ordinary household matters, each spouse (and consequently the wife) is given a clearer "statutory power to administer and use" both the community property and the other spouse's separate property. This is reflected in articles 1432 and 220.

"*Art. 1432.* Where a spouse undertakes to manage the other spouse's separate property

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[1] Note prepared by Mr. E. Dufour, Master of Requests in the *Conseil d'Etat*, Paris, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Act No. 65-570, *Journal officiel*, July, p. 6044.

with that spouse's knowledge and none the less without objection on his part, he shall be deemed to have received a tacit agency, covering instruments for the administration and use of the property, but not instruments disposing of the property.

"This spouse shall answer for his management to the other spouse as an agent...."

"*Art. 220.* Each spouse shall have the power, without the other, to enter into contracts for the purpose of maintaining the household or educating the children; any debt so contracted by a spouse shall bind both spouses jointly and severally...."

These rules are the expression of a sociological reality and of a psychological consequence of the marital union, namely, the joint responsibility of the spouses in domestic life and in the maintenance and education of the children.

Civil procedure

The organization and administration of justice have a considerable bearing on the way in which the rights of plaintiffs and the equality of litigants before the law and before the judge are safeguarded.

Where "civil procedure" is concerned, attention should therefore be drawn to a decree of 13 October 1965[3] concerning the judge responsible for preparing suits for hearing, a decree which makes important procedural innovations.

Without depriving the parties of the right to present summonses, conclusions and communications to the other party, this text creates the post of judge responsible for preparing suits for hearing, with wider powers than his predecessor, the judge "responsible for following the proceedings". This official will have the authority to follow the course of the preliminary investigation and to influence it by setting time-limits for the parties; he may also issue them with court orders, request the production of material evidence, the hearing of witnesses or experts, and take other provisional measures. He may at any stage of the procedure hear the parties and reconcile them. Lastly, it will be his duty to close the preliminary investigation, after fixing a time-limit for the presentation of the files for the hearing.

When these functions have been performed, the "rapporteur judge" who also has broad powers, is to put the elements of the case in order and prepare the discussion. In addition, he (and—after the commencement of the hearing—the court) may, without altering the object or grounds of the action, invite the parties to give the explanations of law and fact required for the settlement of the lawsuit.

It is expected that the gradual introduction of this reform will lead to a better, swifter and more logical administration of justice and provide a more effective remedy against the delaying tactics of some litigants.

Following the reform of the system of guardianship of minors described in the note on the development of human rights in 1964,[4] Title X of the Code of Civil Procedure entitled "Guardianship judge and the family council" was also revised by a decree of 5 April 1965.[5] The new rules define the sphere of competence of the guardianship judge, the manner in which his decisions are notified, the time-limits for appeals against them and the procedure of the family council and appeals against its decisions.

Code of Military Justice

The promulgation of the Code of Military Justice by an Act of 8 July 1965[6] is the culmination of a process in which we cannot but take satisfaction.

The new Code is noteworthy in that it provides a timely compilation of hitherto scattered regulations, gives a clear and logical statement of the procedural rules, which should make them easier to apply, and takes into account the experience acquired in the sphere of military law and the evolution of penal science.

Generally speaking, one of its basic concerns is to ensure respect for the rights of the individual before the judge.

Attention must be drawn to the fact that certain outdated procedures (such as the ceremony of military degradation) have been eliminated, the court is given more latitude in the choice of penalty and there is closer liaison between the command and the *ministère public* as regards the initiation of proceedings.

Under the new Code, the advances made in criminal justice are carefully applied to military justice (limitation of the duration of surveillance, jurisdiction *in rem* of the examining judge, who may extend the proceedings to accomplices or accessories without consulting the military command, etc...).

The composition of military courts has also been radically altered: in future two (instead of one) of the five members will be civilians and the courts will be presided over by a civilian judge, in other words a professional jurist—not only in peace time and in metropolitan France but also in foreign territory (*tribunaux militaires aux armées*) and in war time.

Mention should also be made of the extension of the jurisdiction of the Court of Cassation to all decisions, the creation of *chambres de contrôle de l'instruction* within the new military courts, the abolition of military prisons (as institutions not subject to control by the prison administration) and provision for conditional release by decision of the Keeper of the Seals.

Lastly, the new Code defines the respective jurisdiction of the military authorities and the State Security Court *ratione materiae, personae*

[3] Decree No. 65-872, *Journal officiel*, October, p. 9076.

[4] *See Yearbook on Human Rights for 1964*, p. 116.

[5] Decree No. 65-263, *Journal officiel*, April, p. 2742.

[6] Act No. 65-542, *Journal officiel*, July, p. 5851.

et temporis with regard to threats to State security.

These reforms should provide greater safeguards for persons brought to justice and result in a more judicious application of criminal penalties to members of the armed forces.

Individual freedoms

The *Conseil d'Etat* found that, by issuing an order "permanently and absolutely forbidding the stay or sojourn of nomads in his *département*", a Prefect had illegally restricted the freedom of the individual.[7]

It recognized, however, that under an ordinance of 22 December 1960 and the Act of 10 January 1936 concerning "combat groups and private militia", the Government had the power to decree the dissolution of an association accused of acts expressing solidarity with a subversive political movement that had previously been dissolved.[8]

To meet the exceptional circumstances created by the Algerian war, the Government had been authorized by legislation to place persons suspected or accused of subversive activities under house arrest. Although the person responsible for such serious infringement of the freedom of the individual does not have to justify it, the administrative judge has the right to verify the factual reasons adduced by the administration in justifying its action before the judge. Where the Minister failed to prove a person's alleged membership in a subversive group, the house arrest was cancelled.[9]

Statutory limitation

The text of the Act of 26 December 1964 establishing the non-applicability of statutory limitation to crimes against humanity is attached.

SOCIAL RIGHTS

Safety in construction work

With the aim of preventing accidents at work, a voluminous decree of 8 January 1965[10] (235 articles) implementing the provisions of the Labour Code defines the special protective and health measures to be taken by firms whose staff are engaged in construction, public works and any work relating to buildings.

Social security—Repatriated persons

A series of decrees of 2 September 1965[11] prescribed the arrangements for the take-over and re-evaluation of the social security rights of several categories of persons *repatriated* from Algeria.

Housing

In France, housing problems are always posed in terms of "social justice". The "right to housing" is a permanent claim, but all too often it cannot be satisfied because people lack the necessary financial means and because there is speculation in real estate. All measures connected with construction, ownership of housing and financial assistance to families are therefore always considered in this context.

In this connexion, reference must be made to:

The Act of 10 July 1965[12] establishing a system of *savings for housing*, which gives credit facilities to persons who have opened a special savings account for housing.

The Act of 10 July 1965[13] which, subject to certain conditions, gives the tenants of housing constructed under the legislation on moderate-rent dwellings the right to purchase their apartments. However, some observers have doubts about the social usefulness and efficacy of this text.

The Act of 10 July 1965[14] establishing the conditions for joint ownership of buildings, in other words, the relations between the owners of individual units in multiple-unit buildings.

The Act and decree of 16 and 24 December 1964[15] introducing construction leases. This is a kind of long-term rental, under which the landowner may share in the income from the buildings constructed. It is expected to increase the supply of building land, which is severely limited by speculation.

Migration and changes in the rural economy

The transformation of economic structures and the modernization of the agrarian economy call for profound changes, which are bound to affect the size of farms and the number and skills of workers. Where families and individuals are concerned, these changes, in themselves desirable, inevitably lead to changes of domicile or of professional activity. They thus constitute a "social problem". Ever since the adoption of a law on agricultural training in 1962, the authorities have been trying to promote "rural migration" and "vocational changes", while seeking to attenuate their human consequences.

The texts on this subject have been amended and supplemented by a series of decrees dated

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[7] *Conseil d'Etat*, 20 January 1965, Minister of the Interior *v.* Widow Vicini, No. 62214, *Recueil des décisions du Conseil d'Etat et du Tribunal des Conflits*, 1965, p. 41.

[8] *Conseil d'Etat*, 5 February 1965, *Association Comité d'entente pour l'Algérie française*, No. 55641, *idem.*, p. 73.

[9] *Conseil d'Etat*, 13 July 1965, *Sieur Magne de la Croix*, No. 63021, idem., p. 461.

[10] Decree No. 65-48, *Journal officiel*, February, p. 1018.

[11] Decrees Nos. 65-742, 744, 745, 746, 747, *Journal officiel*, September, p. 7921.

[12] Act No. 65-554, *Journal officiel*, July, p. 5948.

[13] Act No. 65-556, *Journal officiel*, July, p. 5949.

[14] Act No. 65-557, *Journal officiel*, July, p. 5950.

[15] Act No. 64-1247, *Journal officiel*, December, p. 11266, and decree No. 64-1323, *Journal officiel*, December, p. 11754.

15 July 1965,[16] which provide for the granting of long-term or medium-term loans (for the expansion of farms and for additional equipment), life allowances or loans for farmers who agree to move to regions where there is a shortage of agricultural workers, etc.

International instruments

The following have been published in the *Journal officiel:*

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 September 1956 (decree No. 65-462, *Journal officiel,* June, p. 5156);

The International Convention for the Unification of Certain Rules Relating to the Carriage of Passengers by Sea of 29 April 1961 (decree No. 65-533, *Journal officiel,* July, p. 5768);

The International Convention on Safety of Life at Sea of 17 June 1960 (decree No. 65-445, *Journal officiel,* July, p. 4940);

The International Conventions concerning the Carriage of Passengers and Luggage by Rail (CIV) and the Carriage of Goods by Rail (CIM), signed at Berne on 25 October 1952, the Additional Protocol thereto of 25 February 1961 and the Protocol of 29 April 1964 bringing these Conventions into force (decree No. 65-350, *Journal officiel,* May, p. 3704, and special section on *Conventions internationales,* pp. 1-142).

The legislature has approved or authorized the ratification of the following instruments:

European Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, signed at Strasbourg on 6 May 1963 (Act No. 64-1328, *Journal officiel,* December 1964, p. 11788);

Convention on Third Party Liability in the Field of Nuclear Energy, signed in Paris on 29 July 1960 an Additional Protocol of 28 January 1964; Convention of 31 January 1963 Supplementary to the Paris Convention, signed at Brussels, and Additional Protocol of 28 January 1964 (Act No. 65-954, *Journal officiel,* November, p. 9995).

At the same time, two acts were adopted on 12 November 1965 (Nos. 65-955 and 65-956, *Journal officiel,* November, p. 9995), creating as a temporary measure a special system of liability for nuclear incidents and concerning the liability of operators of nuclear vessels.

Amendments to the Articles of Agreement of the International Bank for Reconstruction and Development and the International Finance Corporation (Act No. 65-957, *Journal officiel,* November, p. 9998).

Act No. 64-1326 of 26 December 1964 establishing the non-applicability of statutory limitation to crimes against humanity[17]

Single article

"Crimes against humanity, as defined by the United Nations resolution of 13 February 1946, which took note of the definition of crimes against humanity contained in the Charter of the International Military Tribunal of 8 August 1945, are by their nature not subject to statutory limitation."

[16] Decrees Nos. 65-576, 580, 581 and 582, *Journal officiel,* July, p. 6155 and 6159-6161.

[17] *Journal officiel,* December 1964, p. 11788.

GABON

ACT No. 3-65 OF 5 JUNE 1965

GOVERNING TOWN PLANNING [1]

Art. 1. Town planning shall mean all the technical, administrative, economic and social measures which promote the harmonious, rational and human development of conglomerations.

...

Art. 3. The following must have town planning schemes:

1. Communes or centres with 5,000 or more inhabitants;

2. Centres in which such schemes are justified, either because of demographic growth or because of the picturesqueness of the area;

3. Groups of communes which have joint economic and social interests.

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[1] *Journal officiel de la République gabonaise,* No. 21 of 1 October 1965.

GAMBIA

NOTE [1]

1. The promotion of fundamental human rights in developing countries is of the utmost importance as it contributes significantly to the maintenance of freedom, justice and peace in the world.

2. Basically, human rights may be divided into "legal rights"—that is, civil and political rights which are capable of immediate implementation on the one hand, and "programmatic rights"—that is, social, economic and cultural rights which are usually dependent on progressive measures for their implementation, on the other hand.

3. Before independence, the protection of fundamental human rights in the Gambia was based on the laws of England. When the Gambia attained independence, most of those rights were incorporated in the Constitutional Instrument and afforded full protection.

4. Section 11 of the Constitution provides:

"Whereas every person in the Gambia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

"(*a*) life, liberty, security of the person and the protection of the law;

"(*b*) freedom of conscience, of expression and of assembly and association; and

"(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest."

5. (*a*) *Legal rights* include:

The absence of discrimination, freedom of thought, conscience and religion, right to life, liberty and security of person, the right not to be held in slavery, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right not to be arbitrarily arrested or detained, the right to a fair trial, and freedom of movement.

5. (*b*) *Programmatic rights* include:

Freedom of information, freedom of expression and opinion, the right of peaceful assembly and association, the right to participate in public affairs including political activities, the right to property, rights relating to marriage, the right to education, the right to work under just and favourable conditions, the right to adequate standard of living, the right to health, the right to social security, and the right of peoples to self-determination.

These rights are not in themselves exhaustive.

6. Under (*a*) above, these rights have been deeply entrenched in the Constitution and they can be found under sections 11, 12, 13, 14, 15, 17, 18, 22 and 23. The main limitations embodied in those sections may be said to concern the security of the State and respect of the rights and freedoms of others.

7. As regards (*b*) above, these rights are not all contained in the Constitution; e.g. the rights relating to marriage, the right to education, the right to work under just and favourable conditions, the right to adequate standard of living, the right to health, the right to social security and the right of peoples to self-determination. The provisions of sections 16, 19, 20, and 21 cover the rest of the programmatic rights.

8. In case of emergency, anything done under the authority of an Act of Parliament, which is inconsistent with the provisions of sections 11 to 23 of the Constitution, shall not be deemed to be so inconsistent if the Act authorises the taking of measures reasonably justifiable for dealing with the situation during the period of emergency.

9. Provision has been made under section 26 of the Constitution for anyone who felt his right had been infringed to have free access to the Supreme Court for redress.

[1] Note furnished by the Government of the Gambia. The Gambia became an independent State on 18 February 1965.

10. It has been said earlier that some of the fundamental human rights which have been incorporated in the Constitution have been afforded full protection. Under section 48 of the Constitution, a bill for an Act of Parliament to alter any of the following provisions of the Constitution, that is to say, section 11 to 28, etc., shall not be submitted to the Governor-General for his assent unless the bill, after it has been passed by the House of Representatives and in the form in which it was so passed, has, in accordance with the provisions of any law in that behalf, been submitted to and been approved at a referendum. The bill shall not be regarded as having been approved at that referendum unless it was so approved by the votes of one-half of all such persons entitled to vote in elections of elected members of the House of Representatives, or two-thirds of all the votes validly cast at the referendum. After the bill has been approved at a referendum, the Speaker of the House of Representatives shall grant a certificate to that effect before the bill is submitted to the Governor-General for his assent. Thus where any of the provisions of the fundamental human rights are threatened to be altered, the electors have to signify their consent at a referendum.

11. The Constitutional Referendums Act, 1965 was passed to adopt the Elections Act, 1963 and any subsidiary legislation made thereunder, for the purposes of a referendum and empowering the Supervisor of Elections to make Rules for regulating and controlling the conduct of any referendum.

12. As regards general Government decrees, restrictions of a limited nature are placed on Civil Servants. Under General Orders 5/14, it is provided that:

"Every officer is entitled to his own political views and may, if qualified, vote at elections. He may become a member of a political party or organization but he may not:

(i) accept any office, whether paid or unpaid, permanent or temporary, in any political party or organization; or

(ii) make speeches, join in demonstrations or in any other way indicate publicly his support for any political party, organization, person or policy."

13. In August 1965 a circular issued from the Prime Minister's Office reminding Civil Servants of the need to curb their political activities so as to preserve the loyalty of the Service to the Government of the day. The circular went on to enumerate the limitations imposed on Civil Servants. These limitations were:

"1. Not to accept appointment or election as an officer of a political party;

"2. Not to make speeches or ask or answer questions at public meetings which indicate support for, or antipathy towards, any political party or politician;

"3. Not to assist in election campaign of a candidate for Parliament;

"4. Not to write letters to the Press which refer to political matters and indicate party bias;

"5. Not to distribute literature which advocates the pursuance of a particular party policy; and

"6. Not to show favour to members of a particular political party when dealing with the public."

Looking at these limitations, one may probably think that the right to participate in public affairs is being infringed. That is not so. It is necessary for the administration of the Government and to ensure the strict impartiality of the Civil Service which is responsible for the carrying out of that administration, that Civil Servants are insulated from political interference and victimization. It is rather for their own good that restrictions are necessary.

14. During the preceding three years, there has not been a single case in the Court involving the infringement of human rights.

15. It now remains to deal with those programmatic rights which are not embodied in the Constitution. The Gambia is a country with limited resources and the measures which may be taken to implement those programmatic rights will certainly involve considerable sums of money. However, cognizance has been taken of those rights and it is hoped that, as and when it becomes practicable, those rights will find their way into the Statute Book.

THE CONSTITUTION OF THE GAMBIA[2]

Chapter I

CITIZENSHIP

1.—(1) Every person who, having been born in The Gambia, is on 17th February 1965 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of The Gambia on 18th February 1965:

Provided that a person shall not become a citizen of The Gambia by virtue of this subsection if neither of his parents nor any of his grandparents was born in The Gambia.

(2) Every person who, on 17th February 1965, is a citizen of the United Kingdom and Colonies—

(*a*) having become such a citizen under the British Nationality Act 1948 by virtue of

[2] Text appears as Schedule 3 to The Gambia Independence Order 1965, published as *Statutory Instruments*, No. 135 of 1965, by Her Majesty's Stationery Office, London.

his having been naturalised in The Gambia as a British subject before that Act came into force; or

(*b*) having become such a citizen by virtue of his having been naturalised or registered in The Gambia under that Act,

shall become a citizen of The Gambia on 18th February 1965.

(3) Every person who, having been born outside The Gambia, is on 17th February 1965 a citizen of the United Kingdom and Colonies or a British protected person shall, if his father becomes, or would but for his death have become, a citizen of The Gambia by virtue of subsection (1) or subsection (2) of this section, become a citizen of The Gambia on 18th February 1965.

2.—(1) Any person who, but for the proviso to subsection (1) of section 1 of this Constitution, would be a citizen of The Gambia by virtue of that subsection shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(2) Any woman who, on 17th February 1965, has been married to a person—

(*a*) who becomes a citizen of The Gambia by virtue of section 1 of this Constitution; or

(*b*) who, having died before 18th February 1965, would, but for his death, have become a citizen of The Gambia by virtue of that section

but whose marriage has been terminated by death or dissolution before 18th February 1965 shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

(3) Any woman who, on 17th February 1965, has been married to a person who becomes, or would but for his death have become, entitled to be registered as a citizen of The Gambia under subsection (1) of this section but whose marriage has been terminated by death or dissolution before 18th February 1965 or is so terminated on or after that date but before 18th February 1967 and before that person exercises his right to be registered as a citizen of The Gambia under subsection (1) of this section, shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

(4) In this section "the specified date" means—

(*a*) in relation to a person to whom subsection (1) of this section refers, 18th February 1967; and

(*b*) in relation to a woman to whom subsection (3) of this section refers, 18th February 1967 or the expiration of a period of two years commencing with the termination of her marriage (whichever is the later),

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

3. Every person born in The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth:

Provided that a person shall not become a citizen of The Gambia by virtue of this section if at the time of his birth—

(*a*) neither of his parents is a citizen of The Gambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to The Gambia; or

(*b*) his father is a citizen of a country with which The Gambia is at war and the birth occurs in a place then under occupation by that country.

4. A person born outside The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth if, at that date, his father is a citizen of The Gambia otherwise than by virtue of this section or section 1(3) of this Constitution.

5. Any woman who is married to a citizen of The Gambia or who has been married to a man who was, during the subsistence of the marriage, a citizen of The Gambia shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

...

7.—(1) Parliament may make provision for the acquisition of citizenship of The Gambia by persons who are not eligible or who are no longer eligible to become citizens of The Gambia under the provisions of this Chapter.

(2) Parliament may make provision authorising the Minister to deprive of his citizenship of The Gambia any person who is a citizen of The Gambia otherwise than by virtue of section 1, section 3 or section 4 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of The Gambia.

8.—(1) If the Minister is satisfied that any citizen of The Gambia has at any time after 17th February 1965 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country other than The Gambia, the Minister may by order deprive that person of his citizenship.

(2) If the Minister is satisfied that any citizen of The Gambia has at any time after 17th February 1965 voluntarily claimed and exercised in a country other than The Gambia any rights

available to him under the law of that country, being rights accorded exclusively to its citizens, the Minister may by order deprive that person of his citizenship.

9.—(1) Before any order is made under section 8 of this Constitution or under a law made in pursuance of section 7(2) of this Constitution depriving a person of his citizenship of The Gambia, the Minister shall give that person notice in writing informing him of the ground on which the order is proposed to be made and of his right to have his case referred to a committee of enquiry.

10. . . .

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 18th February 1965 and the birth occurred after 17th February 1965 the national status that the father would have had if he had died on 18th February 1965 shall be deemed to be his national status at the time of his death.

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

11. Whereas every person in The Gambia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

12.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

13.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

(*a*) in execution of the sentence or order of a court, whether established for The Gambia or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of the Supreme Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of The Gambia;

(*f*) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into The Gambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from The Gambia or for the purpose of restricting that person while he is being conveyed through The

Gambia in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) to such extent as may be neccessary in the execution of a lawful order requiring that person to remain within a specified area within The Gambia, or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of The Gambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of The Gambia,

and who is not released, shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(*b*) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

14.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interest of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(*d*) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

15.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in The Gambia on 17th February 1965.

16.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary or expedient—

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilisation of that or other property for a purpose beneficial to the community; and

(*b*) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

...

17.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources or the development or utilisation of any property for a purpose beneficial to the community;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(*c*) that authorises an officer or agent of the Government of The Gambia, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(*d*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

18.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(*b*) may by law be empowered or required to do in the interests of defence, public safety or public order.

...

19.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains or in the course of any education which it otherwise provides.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

20.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(*b*) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, post, wireless broadcasting or television; or

(*c*) that imposes restriction upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

21.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority

thereof is shown not to be reasonably justifiable in a democratic society.

22.—(1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout The Gambia, the right to reside in any part of The Gambia, the right to enter The Gambia, the right to leave The Gambia and immunity from expulsion from The Gambia.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for the imposition of restrictions on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia that are reasonably required in the interests of defence, public safety or public order;

(*b*) for the imposition of restrictions on the movement or residence within The Gambia or on the right to leave The Gambia of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(*c*) for the imposition of restrictions, by order of a court, on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia either in consequence of his having been found guilty of a criminal offence under the law of The Gambia or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from The Gambia;

(*d*) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of The Gambia;

(*e*) for the imposition of restrictions on the acquisition or use by any person of land or other property in The Gambia;

(*f*) for the imposition of restrictions upon the movement or residence within The Gambia or on the right to leave The Gambia of any public officer;

(*g*) for the removal of a person from The Gambia to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia of which he has been convicted; or

(*h*) for the imposition of restrictions on the right of any person to leave The Gambia that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in The Gambia.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

23.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) for the appropriation of public revenues or other public funds;

(*b*) with respect to persons who are not citizens of The Gambia;

(*c*) for the application, in the case of persons of any such description as is mentioned

in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description;

(*d*) for the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law; or

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place or origin, political opinions, colour or creed) to be required of any person who is appointed to or to act in any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 17, 19, 20, 21 and 22 of this Constitution, being such a restriction as is authorised by section 17(2), section 19(5), section 20(2), section 21(2) or paragraph (*a*) or paragraph (*b*) of section 22(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

24. Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 13 or section 23 of this Constitution to the extent that the Act authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in The Gambia during that period.

25.—(1) When a person is detained by virtue of any such law as is referred to in section 24 of this Constitution the following provisions shall apply, that is to say—

(*a*) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of this detention, a notification shall be published in the *Official Gazette* stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in The Gambia;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(*e*) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(*d*) or subsection (1)(*e*) of this section shall be construed as entitling a person to legal representation at public expense.

26.—(1) If any person alleges that any of the provisions of sections 11 to 25 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 11 to 25 (inclusive) of this Constitution:

Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 11 to 25 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of subsection (3) of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 99 of this Constitution to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee.

(5) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

27.—(1) The Governor-General may, by proclamation which shall be published in the *Official Gazette,* declare that a state of emergency exists for the purposes of this Chapter.

(2) Every declaration of emergency shall lapse—

(*a*) in the case of a declaration made when Parliament is sitting, at the expiration of a period of seven days beginning with the date of publication of the declaration; and

(*b*) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration,

unless it has in the meantime been approved by a resolution of the House of Representatives supported by the votes of two-thirds of all the voting members of the House.

(3) A declaration of emergency may at any time be revoked by the Governor-General by proclamation which shall be published in the *Official Gazette.*

...

28.—...

(3) In relation to any person who is a member of a disciplined force raised under an Act of Parliament, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 12, 14 and 15 of this Constitution.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in The Gambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

...

Chapter IV

PARLIAMENT

Part 1

Composition of Parliament

32. There shall be a Parliament which shall consist of Her Majesty and a House of Representatives.

33.—(1) The House of Representatives shall consist of a Speaker and the following other members, that is to say—

(*a*) thirty two members who shall be known as "elected members" and who shall be elected in accordance with the provisions of section 39 of this Constitution; and

(*b*) four members who shall be known as "Chiefs' representative members" and who shall be elected in accordance with the provisions of section 39 of this Constitution; and

(*c*) until Parliament otherwise provides, two members who shall be known as "nominated members" and who shall be appointed in accordance with the provisions of section 41 of this Constitution.

(2) Only an elected member or a Chiefs' representative member shall be entitled to vote upon any question before the House of Representatives and the elected members and the Chiefs' representative members are in this Constitution collectively referred to as "voting members".

(3) A person who is exercising the functions of the office of Attorney-General by virtue of section 64(4) of this Constitution but who is not otherwise a member of the House of Representatives shall be an *ex officio* member of the House but shall not be entitled to vote therein.

34. Subject to the provisions of section 35 of this Constitution, a person shall be qualified to be nominated for election as a voting member of the House of Representatives or to be appointed as a nominated member if, and shall not be so qualified unless, at the date of his nomination for election or, as the case may be, at the date of his appointment—

(*a*) he has attained the age of twenty-one years;

(*b*) he can speak English well enough to take an active part in the proceedings of the House;

(*c*) in the case of a voting member, he is a citizen of The Gambia; and

(*d*) in the case of an elected member, he is registered in some constituency as a voter in elections of elected members of the House and is not disqualified from voting in such elections.

35.—(1) No person shall be qualified to be nominated for election as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment—

(*a*) in the case of a voting member, he is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to any foreign power or state;

(*b*) he holds the office of Speaker;

(*c*) he is, under any law in force in The Gambia, adjudged or otherwise declared to be of unsound mind;

(*d*) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in The Gambia;

(*e*) he is under sentence of death imposed on him by a court in The Gambia or is under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(*f*) subject to such exceptions and limitations as may be prescribed by Parliament, he has any such interest in any such government contract as may be so prescribed.

(2) Parliament may provide that a person shall not be qualified to be nominated for election as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment, he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the House or the compilation of any register of voters for the purposes of such an election.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the House of Representatives or is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be nominated for election as a voting member of the House or to be appointed as a nominated member.

(4) No person shall be qualified to be nominated for election as an elected member of the House of Representatives who, at the date of his nomination for election, is, or is nominated for election as, a Chiefs' representative member; and no person shall be qualified to be nominated for election as a Chiefs' representative member who, at the date of his nomination for election, is, or is nominated for election as, an elected member.

(5) No person shall be qualified to be nominated for election as a voting member of the House of Representatives who, at the date of his nomination for election, is a nominated member; and no person shall be qualified to be appointed as a nominated member who, at the date of his appointment, is, or is nominated for election as, a voting member or who has, at any time since Parliament was last dissolved, stood as a candidate for election as a voting member but was not elected.

(6) Parliament may provide that, subject to such exceptions and limitations as Parliament may prescribe, a person shall not be qualified to be nominated for election as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment—

(*a*) he holds or is acting in any office or appointment that may be prescribed by Parliament;

(*b*) he is a member of any naval, military or air force that may be so prescribed; or

(*c*) he is a member of any police force.

(7) For the purposes of subsection (1)(*e*) of this section—

(*a*) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(*b*) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(8) In subsection (1)(*f*) of this section "government contract" means any contract made with the Government of The Gambia or with a department of that Government or with an officer of that Government contracting as such.

36.—(1) The Gambia shall, in accordance with the provisions of section 38 of this Constitution, be divided into constituencies and each constituency shall elect one elected member to the House of Representatives in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.

(2) The election of elected members of the House of Representatives shall be based upon universal adult suffrage, that is to say—

(*a*) every citizen of The Gambia who has attained the age of twenty-one years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections of elected members of the House of Representatives, be entitled to be registered as such a voter under any law in that behalf, and no other person may be so registered; and

(*b*) every person who is registered as aforesaid in any constituency shall, unless he is disqualified by Parliament from voting in that constituency in any election of elected members of the House of Representatives, be entitled so to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

(3) In any election of elected members of the House of Representatives the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

...

39.—(1) The Chiefs' representative members shall be elected by the Head Chiefs from among their own number in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) In any election of the Chiefs' representative members the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

...

41. The nominated members shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

...

Part 2

Legislation and procedure in House of Representatives

...

48.—(1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A bill for an Act of Parliament under this section shall not be passed by the House of Representatives unless it was supported on the final reading in the House by the votes of two-thirds of all the voting members of the House.

...

GHANA

HUMAN RIGHTS IN 1965 [1]

INTRODUCTORY NOTE

In 1965 the Government of Ghana enacted a number of laws which conform with a number of the principles laid down in the Declaration of Human Rights.

The principle that everyone has the right to take part in the government of his country directly or through freely chosen representatives in free elections on the basis of universal and equal suffrage is contained in the Electoral Provisions Act, 1965 which consolidates with amendments the law relating to parliamentary and local government elections.

The first enactment on the subject was passed in 1953 and the 1965 Act incorporates the principle of equal and adult suffrage expressed in the Ordinance passed in 1953.

There is also no discrimination against women with respect to the franchise.

THE ELECTORAL PROVISIONS ACT, 1965 (ACT 291)

Part I

THE FRANCHISE

1. (1) For the purposes of the election of Members of Parliament each Region of Ghana shall be divided into prescribed areas which shall be known as electoral districts, the total number of which shall not be less than one hundred and four.

(2) Electoral districts shall be so divided that the number of persons resident in each electoral district at the time of the division shall, as nearly as practical considerations admit, be the same.

(3) In dividing any Region into electoral districts, regard shall be had to the physical features of the Region and its transport facilities and no electoral district shall be partly in one Region and partly in another Region.

(4) Each electoral district shall return one Member to Parliament.

...

5. Subject to the provisions of section 6 of this Act, any person shall be entitled to be registered as an elector if—

(*a*) He is a citizen of Ghana and has attained the age of twenty-one years;

(*b*) He either has immovable property within the ward in respect of which the application is made or he has, for a period of not less than twelve months immediately preceding the date of his application to register, resided within the ward in respect of which the application is made; and

(*c*) He is not subject to any legal incapacity to vote:

Provided that a person who on the date specified for application to be made for registering electors has a service qualification shall not be entitled to be registered except in pursuance of a service declaration made in accordance with section 24 of this Act and in force on that date.

6. (1) A person shall not be registered as an elector if—

(*a*) He has been sentenced in Ghana for any offence to death or to imprisonment for a term exceeding twelve months, or for any offence to imprisonment for consecutive terms exceeding twelve months in all, not being a person—

(i) who has been granted a free pardon in respect of the said offence or offences, or

(ii) whose said imprisonment terminated more than five years previously;

(*b*) He has been convicted in Ghana of an offence which involved dishonesty, not being a person—

(i) who has been granted a free pardon in respect of the said offence, or

(ii) whose imprisonment for the said offence terminated more than five years previously, or

(iii) who, not having been sentenced to imprisonment for the said offence, was convicted more than five years previously;

(*c*) He is a person adjudged to be of unsound mind or detained as a criminal lunatic;

[1] Note furnished by the Government of Ghana.

(*d*) He is a person against whom an order was made under the Preventive Detention Act, 1964 (Act 240) or under any enactment repealed by that Act and continued in force by virtue of section 10 thereof; or

(*e*) He is disqualified from registering as an elector under Part VI of this Act or any other law for the time being in force; or

(*f*) He has been convicted in any other country of any crime which, if committed in Ghana, would be an indictable offence described in the First Schedule to the Extradition Act, 1960 (Act 22) or in that Schedule as amended:

Provided that the President may by executive instrument remove any disability imposed on any person by this paragraph.

(2) A person shall not be entitled to have his name retained on the register of electors if—

(*a*) He ceases to be a citizen of Ghana;

(*b*) For a continuous period or twelve months, he ceases to reside within the electoral district;

(*c*) He becomes disqualified for voting under subsection (1) of this section.

* * *

...

The principle in the Declaration that everyone has a right to form and to join trade unions for the protection of his interests is followed in the Industrial Relations Act, 1965 (Act 299). This Act revises and consolidates the law relating to trade unions collective bargaining and other matters affecting the relations between employees and employers.

The first enactment on the subject was the Industrial Relations Act, 1958 (No. 56 of 1958) and the Industrial Relations Act, 1965 has had the effect of making the Act of 1958 and its subsequent amendments conform to the international standard.

The Industrial Relations Act, 1965 deals with the Trades Union Congress, its composition, nature and powers. Detailed provision is made for the conduct of collective bargaining. Provision is also made for the reference of disputes to arbitration in the event of failure of negotiations. Where arbitration fails to satisfy the parties to a dispute then resort may be had to strike action.

THE INDUSTRIAL RELATIONS ACT, 1965 (ACT 299)

1. (1) The body which immediately before the commencement of this Act was known as the Trades Union Congress shall be continued in existence under the same name subject to the provisions of this Act until dissolved or otherwise constituted in accordance with rules made under section 2.

(2) The Congress shall be a body corporate with perpetual succession and a common seal and shall have power to acquire and hold land and other property.

(3) Unless and until otherwise decided by the trade unions or any appropriate organisation of workers, the Congress shall act as the representative of the trade union movement in Ghana.

(4) The trade unions specified in the First Schedule to this Act, being immediately before the commencement of this Act members of the Congress, shall continue to be members thereof without prejudice to the withdrawal therefrom or addition thereto of any trade union upon the decision of such trade union.

(5) Upon the withdrawal from or addition to the membership of the Congress under subsection (4) the Minister shall by legislative instrument amend the First Schedule to this Act to give effect to such withdrawal or addition.

2. The Congress shall have the power to make rules providing for any matters relating to the organisation, management or discipline of the Congress or to enable the Congress to carry out any of its functions under this Act.

3. (1) The Congress shall on application by a trade union request the Registrar to issue a certificate appointing that trade union as the appropriate representative to conduct on behalf of a class of employees specified in the certificate collective bargaining with the employers of such employees and, subject to subsection (4), the Registrar shall be bound to comply with such a request.

(2) An application made under this section shall include—

(*a*) The description of the class of employees in respect of which the application is made and their estimated number; and

(*b*) The number of employees of that class who are members of the trade union by whom the application is made.

(3) The specification of the class of employees in a certificate issued under this section may be made by reference to the employer of such employees or to the occupation of such employees or in any other manner.

(4) More than one certificate may be issued under this section in respect of the same trade union but the Registrar shall not appoint a trade union under this section for any class of employees if there is in force a certificate under this section appointing another trade union for that class of employees or any part of that class.

(5) A certificate issued under this section shall have effect notwithstanding that some of the employees of the class specified are not members of the trade union appointed under the certificate.

(6) A certificate issued under this section shall be published in the Gazette and the Registrar shall take such other steps as appear to him to be appropriate to bring the certificate to the notice of the employees concerned and their employer.

(7) At any time after the issue of a certificate under this section the Registrar may at the request of either the trade union to which the certificate applies or the appropriate employers' organisation and after consultation with the said trade union and the said organisation withdraw the certificate without prejudice to the right of such a trade union to apply for a fresh certificate under this section.

...

15. (1) Subsection (1) of section 3 of the Trade Disputes (Arbitration and Enquiry) Ordinance (Cap. 93) (which enables either party to a trade dispute to report the dispute to the Minister) shall not apply to a trade dispute which may properly be dealt with by a standing negotiating committee under this Act; but this subsection shall not be read as preventing the Minister from referring any dispute to arbitration under subsection (2) of section 3 of that Ordinance with the consent of the parties at any time.

(2) For the purposes of this Act any valid award made on a reference to arbitration to which the representatives on a standing negotiating committee under this Act are parties shall be regarded as a collective agreement under this Act.

...

21. (1) Where the Minister has, under subsection (1) of section 18, served notices on the parties to a dispute, either party (that is to say either the trade union or the employers' representatives) may serve on the Minister and on the other party a notice stating—

(*a*) That they do not consent to the dispute being referred to and determined by arbitration; and

(*b*) That, unless the other party consents to arbitration and the Minister, within four weeks of the service of the notice, directs that the dispute be referred to arbitration, they intend to declare a strike, or, as the case may be, a lockout in furtherance of the dispute,

and at the expiration of the said period of four weeks it shall be lawful for the trade union or, as the case may be, the employers to declare a strike or lockout unless before the end of that period the Minister has directed that the dispute be referred to arbitration.

(2) Subject to the provisions of subsection (1) any strike or lockout of employees of a class specified in a certificate under section 3 is unlawful, and, in particular, such a strike or lockout is unlawful if its object is in furtherance of a dispute on—

(*a*) Matters which are wholly or partly governed by a collective agreement under this Act; or

(*b*) Matters which, under this Act, are not to be dealt with by the permanent negotiating committee.

* * *

There is no discrimination in the field of education in Ghana on grounds of sex, race, class or creed.

The policy of the Government of Ghana in education has been to completely abolish illiteracy, to increase the facilities for secondary and technical education and to ensure that university education is available to all on the basis of merit.

Primary and middle-school education was made free and compulsory throughout Ghana in 1961.

Fee-free secondary and technical education were established in Ghana in 1965 and in that year over 8,000 new students entered secondary schools and technical institutions.

A number of universities have been established in Ghana—the University of Ghana established in 1961, the University of Science and Technology, Kumasi also established in 1961, and the University College of Cape Coast which was formally inaugurated in 1962.

The Government of Ghana is responsible for financing these institutions, and nearly all Ghanaian students who attend these institutions hold Ghana Government Scholarships.

The Government of Ghana has instituted a scholarship scheme under which students from other African countries are awarded scholarships from time to time through their governments to universities in Ghana. Over one hundred and fifty scholarships have been offered to non-Ghanaian Africans under this scheme.

The Government of Ghana has instituted ten scholarships as her contribution to the Commonwealth Scholarship Fellowship Plan to enable Commonwealth citizens to come to Ghana for research or further studies.

In recognition of the contribution made to the development of education in Ghana and the assistance given to Ghanaians studying in America by both the Phelps/Stokes Fund and the Hazen Foundation (Sponsors of Aggrey Fellowships) the Government of Ghana has established a fellowship scheme known as Phelps Stokes-Hazen Fellowship valued at £840 per annum to enable deserving American scholars to pursue further studies in universities in Ghana.

The Ghana Government in co-operation with the UNESCO Emergency Programme of Financial Aid for the Development of Education in Africa offered from 1961 twelve places at the University College of Ghana to persons of African descent who hold three-year UNESCO fellowships under the Emergency Programme.

* * *

The principle in the Declaration that everyone has the right to security in the event of sickness disability, widowhood and old age is endorsed by the Social Security Act, 1965 and the Workmen's Compensation (Amedment) Act, 1965. The Social Security Act, 1965 (Act 279) which is designed to make financial provision for workers in Ghana when their gainful employment is interrupted by the contingencies of retirement due to

old age permanent incapacity for work and due to physical or mental infirmity or death. It applies to all persons employing five or more workers and to all their workers except pensionable employees of the Government.

It provides in the first instance for a compulsory contributory provident fund to which both the workers and their employers are required to contribute and from which benefits are paid in the event of retirement.

THE SOCIAL SECURITY ACT, 1965 (ACT 279)

1. There is hereby established a Fund to be called the Social Security Fund into which shall be paid all contributions and other moneys, and out of which may be paid such benefits and other sums, as may be required under this Act to be paid thereinto or thereout, as the case may be.

...

4. Subject to the other provisions herein, this Act, from the appointed date, shall apply to every employer of an establishment employing not less than five workers, and to every worker employed therein, so, however, that in the case of an establishment in existence on the day immediately preceding such date, this Act shall apply to every employer of an establishment who has for a continuous period of ninety days during a period of twelve months immediately before that date employed not less than five workers and to every worker employed therein.

...

8. (1) Subject to the other provisions of this Act, every employer of an establishment shall, with effect from the appointed date, deduct from the pay of every worker in such establishment immediately after the contribution period, a worker's contribution of an amount equal to seven and a half per centum of such worker's pay for such period, irrespective of whether or not such pay is actually paid to the worker.

(2) Subject to the other provisions of this Act, every employer of an establishment shall, with effect from the appointed date, pay for each month in respect of each worker in such establishment, an employer's contribution of an amount equal to fifteen per centum of such worker's pay during such month.

(3) The contributions referred to in the preceding subsections shall, within the prescribed period after the end of each month, be remitted to the fund or to a prescribed person.

(4) A self-employed person shall contribute fifteen per centum of his income for the month from his profession or occupation.

(5) Notwithstanding any agreement or understanding to the contrary, an employer shall not be entitled—

(*a*) To deduct or otherwise recover his own contribution from the worker's pay; or

(*b*) To deduct the member's contribution for an earlier contribution period from the pay in respect of a later period:

Provided that the employer shall be entitled to make such deduction—

(i) if his failure to make the deduction was due to a false declaration made in writing by the worker at the time of his employment that he was not already a member of the fund, or

(ii) if such failure to deduct the contribution was the result of an accidental mistake or a clerical error, in which case the deduction shall be made according to the written instructions of an inspector.

(6) Where an employer deducts contributions from the pay of workers under this Act, the contributions shall be deemed to be held by such employer in trust for the purposes of the Act until they are remitted to the fund or a prescribed person in accordance with its provisions.

(7) No contributions due and paid under this Act shall be refunded to the employer, even if the worker is not entitled to any part thereof.

The Social Security Fund Regulations, 1965 were made under section 29 of the Social Security Act, 1965 (Act 279) and provide for the administration of the Act by an Advisory Board, the registration of employers and workers under the Act, the payment of contributions under the Fund, applications for the various benefits under the Fund and the financial and accounting system to be operated in respect of the Fund.

* * *

The Workmen's Compensation (Amendment) Act, 1965 (Act 295) makes better provision for the protection of the rights of injured workmen who are illiterate and of other injured workmen in respect of agreements as to the amount of the compensation to be paid by their employers in respect of the injuries and for that purpose it amends the Workmen's Compensation Act, 1963 (Act 174).

The first enactment on the subject was the Workmen's Compensation Ordinance (Cap. 94) which came into force in 1942. This Ordinance was very limited in its scope and in the benefits it provided for injured workmen. The Workmen's Compensation Act, 1963 (Act 174) which repealed Cap. 94 consolidated the law relating to workmen for injuries suffered in the course of their employment. This Act extended the scope of the law and made substantial advancement in legislation relating to workmen's compensation.

THE WORKMEN'S COMPENSATION (AMENDMENT) ACT, 1965 (ACT 295)

1A. Section 15 of the Workmen's Compensation Act, 1963 (Act 174) (hereinafter referred to as "the Act") is hereby amended by the substitution for subsection (3) thereof of the following sub-section:

"(3) Where the workman is illiterate or is unable to read and understand writing in the language in which the agreement is expressed, the agreement—

"(*a*) Shall not be binding against him unless it is endorsed by a certificate of a Labour Officer to the effect that such Officer read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve of the agreement, and

"(*b*) Shall not operate to preclude the workman from instituting proceedings independently of this Act to recover damages in respect of the injury to which the agreement relates unless the certificate of the Labour Officer contains a statement to the effect that he explained to the workman that the making of the agreement would preclude him from instituting any such proceedings and that the workman appeared fully to understand and accept the legal position in that regard."

1B. Section 15 of the Act is also hereby amended by the insertion therein after subsection (3) thereof of the following new subsection—

"(4) A Labour Officer, for reasons which to him appear sufficient, other than that the workman is illiterate or is unable to read and understand writing in the language in which the agreement is expressed, may endorse any agreement by a certificate to the effect mentioned in paragraph (*a*) and containing the statement mentioned in paragraph (*b*) of subsection (3) of this section, and the provisions of the said subsection shall apply, in all respects as they apply to an agreement endorsed thereunder, to an agreement endorsed under this subsection."

***

The principle that motherhood and childhood are entitled to special care and assistance and that all children, whether born in or out of wedlock, shall enjoy the same social protection followed in the Maintenance of Children Act, 1965 (Act 297) which provides for the maintenance of neglected children, and makes it possible to take a father to court where the father having the means fails to make adequate provision for his child or children.

Before court proceedings can be instituted, an application must first have been made to the Minister of Social Welfare in accordance with clauses 1 and 2 of the Act.

THE MAINTENANCE OF CHILDREN ACT, 1965 (ACT 297)

Part I

Preliminary Provisions

1. Where a father neglects to provide reasonable maintenance for his infant child or when a man alleged to be the father denies that he is the father of the child, the mother of the child may apply to the Minister of Social Welfare (in this Act referred to as "the Minister") or such other person as may be directed by the Minister in that behalf to persuade the father to make reasonable provision for the maintenance of the child or make such other award as the Minister may consider appropriate in the circumstances in accordance with the provisions of this Act.

2. Without prejudice to paragraph (*b*) of section 52 of the Courts Act, 1960 (C.A.9) (which confers jurisdiction on District Courts to appoint guardians of infants and to make orders for custody of infants), a father in respect of whom application has been made under section 1 of this Act may also apply to the Minister to request the mother to give him the custody of the child.

3. Where an application has been made under section 1 or both sections 1 and 2, the Minister may appoint a committee consisting of such fit and proper persons as he may consider appropriate to inquire into the matter in relation to which the application has been made and to make recommendations to him.

4. The Minister may, on receipt of the recommendations of the committee appointed under section 3 of this Act, make a ruling in accordance with any of the succeeding provisions of this section as he may consider just—

(*a*) Where the matter under consideration relates solely to an application under section 1 of this Act, the Minister may, having regard to the means of the father and the mother, request the father to make such reasonable allowance not exceeding £G5 a month for the maintenance of the child as the Minister may specify; or

(*b*) Where an application has also been made under section 2 of this Act, the Minister may either make a ruling in accordance with paragraph (*a*) of this section or request the mother to give the custody of the child to the father:

Provided that before making a ruling, the Minister shall regard the welfare of the child as the first and paramount consideration.

5. Where a ruling has been made by the Minister under section 4 of this Act, the mother in respect of whom such ruling has been made may make an application to the court in accordance with the provisions of Part II or III of this Act, as the case may be—

(*a*) If she is dissatisfied with the ruling of the Minister; or

(*b*) If the father in respect of whom an application under section 1 of this Act was made—

(i) fails to appear before the Minister or a committee appointed under section 3 of this Act when requested to do so,

(ii) refuses or fails to comply with any ruling made under section 4 of this Act, or

(iii) denies that he is the father of the child.

6. No proceedings shall be instituted under Part II or III of this Act unless an application has first been made and a ruling made thereon in accordance with the provisions of this Part.

* * *

...

The right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author is contained in the Textile Designs (Designs Registration) Act, 1965 (Act 317).

The Textile Designs (Designs Registration) Act, 1965 (Act 317) provides for the registration of textile designs for the protection of the registered proprietors of such designs.

THE TEXTILE DESIGNS (REGISTRATION) ACT, 1965 (Act 317)

1. (1) Subject to the other provisions of this Act, a textile design may upon application made by the person claiming to be the proprietor, be registered under this Act in respect of any textile article or textile articles specified in the application.

(2) Subject to the other provisions of the Act, a textile design shall not be registered—

(*a*) If it has been copied exactly from a design belonging to a registered proprietor;

(*b*) If it is similar to any textile design in such a way as to be likely to mislead purchasers in Ghana or to damage the business of any registered proprietor of a textile design;

(*c*) If it differs from another textile design only in immaterial details or in features which are variants commonly used in the trade; or

(*d*) For any other prescribed reason.

3. The registration of a textile design under this Act shall give to the registered proprietor of such design, the copyright therein, that is to say, the exclusive right in Ghana to make or import for sale or for use for the purposes of any trade or business, or to sell, hire or offer for sale or hire, any textile article in respect of which the textile design is registered.

GUATEMALA

LEGISLATIVE DECREE No. 327 [1]

Article 1. If prostitution is carried on in violation of the provisions of article 21 of the Sexual Hygiene Regulations, the Ministry of the Interior shall immediately close the establishment and shall order the violators to vacate the premises within a period of thirty days from the date of notification, with notice of dispossession without further proceedings if the premises are not vacated within the said period.

Article 2. If prostitution continues in spite of the closure referred to in the preceding article, the Ministry of the Interior shall impose a fine of 300 quetzals upon the parties responsible and shall proceed to dispossess them immediately even though the time-limit for vacating the premises has not elapsed.

Article 3. Departmental governors shall communicate to the Ministry of the Interior all data relating to houses of prostitution found to be operating within their respective jurisdictions and those that may be established subsequent to the date of entry into force of this Decree.

...

[1] *El Guatelmalteco,* Vol. CLXXII, No. 79, of 2 February 1965.

LEGISLATIVE DECREE No. 333 [2]

Article 1. A state of siege is hereby declared throughout the territory of the Republic, and the guarantees contained in article 22, paragraphs 2, 6, 7, 8, 9 and 10, of the Fundamental Charter of Government are suspended. [3]

Article 2. The effects of the preceding article shall continue as long as may be necessary.

Article 3. The Head of Government shall prescribe whatever measures he deems appropriate to maintain public order and crush the subversive action that has prompted this decree.

[2] *Ibid.,* Vol. CLXXII, No. 98, of 24 February 1965.

[3] For extracts from the Fundamental Charter of Government, see *Yearbook on Human Rights for 1963,* pp. 143-145.

CONSTITUTION OF THE REPUBLIC OF GUATEMALA OF 15 SEPTEMBER 1965 [4]

TITLE I

OF THE NATION, THE STATE AND ITS GOVERNMENT

Chapter I

GENERAL PROVISIONS

Article 1. Guatemala is a free, sovereign and independent Nation, organized to guarantee to its inhabitants the enjoyment of liberty, security and justice. Its system of government is republican, democratic and representative. It delegates the exercise of its sovereignty to the Legislative, Executive and Judicial organs, none of which is subordinate to the others.

No person, group or body may arrogate to itself the sovereignty of the Nation.

...

[4] *El Guatemalteco,* Vol. CLXXIV, No. 65, of 15 September 1965.

Chapter II

NATIONALITY

Article 5. The following are native Guatemalans:

1. Persons born in the territory, vessels and aircraft of Guatemala, children of Guatemalan father or mother, of parents not identified, or of parents whose nationality is not known.

2. Persons who are born in Guatemala, children of alien parents, if one of them has his domicile in Guatemala.

Persons who are born in Guatemala, children of aliens in transit, if, when they attain their majority, they establish their domicile in the Republic and declare their wish to be Guatemalans.

This does not apply to the children of aliens who are diplomatic officials and the children of persons discharging duties accorded similar status by law and in international law.

3. Persons born outside the territory of the Republic, children of native Guatemalan father and mother, in the following cases:

(*a*) If they establish domicile in Guatemala;

(*b*) If, in accordance with the laws of the place of their birth, they are not entitled to foreign nationality;

(*c*) If they were entitled to choose and opted for Guatemalan nationality.

4. Persons born outside the territory of the Republic, children of father or mother who are native Guatemalans or would have been Guatemalan, if they establish domicile in Guatemala and opt for Guatemalan nationality; and those who are included in the classes enumerated in sub-paragraphs (*b*) and (*c*) of the preceding paragraph.

5. Persons born abroad, children of Guatemalan father or mother who are outside the national territory in the service of the Republic.

To opt for Guatemalan nationality implies the renunciation of any other nationality, except a Central American nationality, and if this is retained, the fact must be placed expressly on record.

Article 6. Nationals by birth of the other Republics which constituted the Federation of Central America are likewise considered to be native Guatemalans if they establish domicile in Guatemala and declare before a competent authority their wish to be Guatemalans. In such case, they may keep their nationality of origin.

The provision in the preceding paragraph shall be without prejudice to whatever may be established in Central American bilateral or multilateral treaties or agreements.

Article 7. The following are naturalized Guatemalans:

1. Aliens who have obtained a naturalization certificate in accordance with the law;

2. Aliens who, having had their domicile and residence in Guatemala for the period of time established by law, obtain a naturalization certificate;

3. An alien woman married to a Guatemalan who chooses Guatemalan nationality or who, in accordance with the laws of her country, loses her nationality by reason of her marriage;

4. An alien man married to a Guatemalan woman, with two or more years of residence, when he chooses Guatemalan nationality, provided that the conjugal domicile is in Guatemala;

5. Alien minors adopted by a Guatemalan, who shall have the right to opt for their nationality or origin within one year of attaining their majority;

6. Minor children born abroad of a naturalized Guatemalan, who shall have the right of option mentioned in the preceding paragraph on reaching the age of majority;

7. Spaniards and Latin Americans by birth who establish domicile in Guatemala and declare before the appropriate authorities their desire to become Guatemalans.

Naturalized Guatemalans shall not be subject to any limitations other than those deriving from this Constitution and those applicable by law to all Guatemalans.

Article 8. Persons to whom Guatemalan nationality is granted must expressly renounce any other nationality and take an oath of allegiance to Guatemala and of respect for the Constitution.

Article 9. Guatemalan nationality is lost:

1. By voluntary naturalization in a foreign country, unless it is a Central American country;

2. If naturalized Guatemalans reside for three or more consecutive years outside the territory of Central America, except in the case of *force majeure* or in cases provided for by law or in international treaties;

3. If naturalized Guatemalans commit a treasonable offence against the State, or repudiate their status as Guatemalans in any official document or public instrument, or voluntarily use a foreign passport;

4. By revocation, in accordance with the law, of the naturalization granted. The appropriate legal remedies may be invoked against the application of such decision.

Article 10. Guatemalan nationality may be recovered:

1. By native Guatemalans who have lost it by naturalization in a foreign country, if they establish domicile in Guatemala, unless the foreign naturalization was the consequence of marriage;

2. By persons who, having been entitled to choose between two nationalities, have opted for a nationality other than Guatemalan, if they establish domicile in Guatemala and declare their desire to be Guatemalans;

3. By dissolution of the marriage, when naturalization in a foreign country has resulted from marriage, provided that the person concerned declares his desire to recover Guatemalan nationality; and without such declaration, if the

foreign nationality has been lost through dissolution of the marriage.

Article 11. The obligations of Guatemalans are:

1. To serve and defend the Country.
2. To comply with the Constitution of the Republic and to ensure that it is complied with.
3. To work for the civic, cultural, moral, economic and social development of the Nation.
4. To contribute to the public expenses in the form prescribed by the law.
5. To obey the laws and regulations.
6. To respect the authorities.
7. To perform military service in accordance with the law.

Article 12. The law shall make regulations for all matters pertaining to procedures concerning nationality.

Chapter III

CITIZENSHIP

Article 13. The following persons are citizens:

All Guatemalans of either sex who are over eighteen years of age.

Article 14. The following rights and duties are inherent in citizenship:

1. To elect and be elected;
2. To hold public office;
3. To invigilate the freedom and effective exercise of the suffrage and the proper conduct of the electoral procedure;
4. To uphold the principle of alternative election and non-eligibility for re-election to the office of President of the Republic, in any form whatsoever, as an invariable rule in the political system of the State;
5. To register as an elector;
6. To vote, except where the suffrage is optional.

Article 15. Citizenship is suspended:

1. As a result of a final conviction and sentence in a criminal case.
2. As a result of disability imposed by law, involving loss of civil rights.

Article 16. The suspension of citizenship is lifted:

1. When a penalty imposed by a judicial sentence has been served.
2. As a result of amnesty or total pardon.

Article 17. Citizenship is lost:

1. By the loss of Guatemalan nationality.
2. By voluntary service with States at war with Guatemala or with their allies, provided that such service entails treason to the Country.

Article 18. Citizenship may be recovered:

1. After the lapse of a period of two years since the recovery of Guatemalan nationality.
2. By governmental decree or judicial decision in the cases determined by the law.

Chapter IV

SUFFRAGE

Article 19. The suffrage is universal. Voting is secret, compulsory for those who can read and write and optimal for illiterates.

Article 20. Guatemalans who are in enjoyment of their rights as citizens and are entered on the Electoral Registers are electors.

Article 21. The following shall be punished in accordance with the criminal law:

1. Any person, who hinders or tries to hinder, citizens from registering as electors or exercising their right to vote.
2. Any person who compels, or attempts to compel, a voter to vote in a certain way.
3. Any person who by any means of coercion compels, or attempts to compel, illiterate electors to go to the polls.

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Chapter V

POLITICAL PARTIES

Article 27. The State guarantees the free formation and functioning of political parties whose conduct and principles are democratic.

The formation or functioning of parties or bodies which advocate the communist ideology or which, by their doctrinal tendency, methods of action or international connexions, violate the sovereignty of the State or undermine the foundations of the democratic structure of Guatemala is prohibited.

Article 28. No body may register as a political party unless it is composed of not less than fifty thousand members who are in the enjoyment of their rights as citizens and are entered on the Electoral Register, not less than twenty per cent of whom can read and write.

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TITLE II

CONSTITUTIONAL GUARANTEES

Chapter I

GUARANTEES AND INDIVIDUAL RIGHTS

Article 43. All human beings are free and equal in dignity and rights in Guatemala.

The State guarantees as rights inherent in the human person: life, corporal integrity, dignity, personal security and security of property.

No person may be subjected to slavery nor to any other condition which impairs his dignity or honour.

Any discrimination on account of race, colour, sex, religion, birth, economic or social position or political opinion is prohibited.

Article 44. The free exercise of the rights established in the Constitution is guaranteed,

with no limitations other than those deriving from the need to maintain public and social order.

Article 45. Every person has the right to do what the law does not prohibit. No one is obliged to comply with, or to obey, orders or commands which are not founded in law. No one may be persecuted or molested for his opinions or for acts which do not entail any breach of the law.

Any act by which Guatemalans are hindered or restricted in the exercise of their rights or the performance of their civic duties is a punishable offence, unless such restriction is laid down in the Constitution.

Article 46. No one may be detained or imprisoned except by reason of a crime or offence or by a warrant or order issued by a competent judicial authority in accordance with the law. A prior order shall not be necessary in the case of a criminal *in flagrante delicto* or a fugitive criminal. Persons in custody must be immediately brought before a judicial authority and must be held in a remand centre separated from places where convicts are serving their term.

Article 47. Persons whose identity and credit can be established by means of document, by the testimony of a reputable person or by the authority itself may not be detained for petty offences or breaches of regulations. In such cases, the authority, under penalty of the appropriate sanction, must do no more than inform the competent judge and advise the offender that he must appear before a court within the forty-eight working hours next following. Any person disobeying such summons shall be punished in accordance with the law.

Any person who is unable to identify himself in the manner laid down in the preceding paragraph shall be brought before the competent judge within the first working hour following his detention. For this purpose every day of the year is a working day during the hours between 8 a.m. and 6 p.m.

Article 48. No law shall have retroactive effect, except where, in criminal cases, it is favourable to the accused.

Article 49. Any acts of commission or omission which are not statutory crimes or offences and did not attract any penalty under a law enacted prior to their perpetration are not punishable.

Any individual act, or act in association with other persons, of a communist or anarchist character, or any act incompatible with democracy, is a punishable offence. The law shall determine what is covered by this class of offence.

There is no imprisonment for debt.

No one may be sentenced to be held *incommunicado.*

Article 50. No one may be obliged to testify in a criminal case against himself, against his spouse or against his relatives within the fourth degree of consanguinity or the second of affinity.

Article 51. Every person who is held in custody shall be interrogated within forty-eight hours. At the time of his examination he shall be informed of the reason for his detention, the name of the person who has denounced or accused him, and of everything that is essential for his knowledge of the offence of which he is accused. As soon as this inquiry begins, he may provide himself with counsel, who shall have the right to be present at the examination, and to visit his client at any time within working hours.

The period of detention may not exceed five days. Within that period a committal order must be issued or else an order for discharge. Any judge who extends that period is answerable therefor.

Any authority, prison governor, or prison employee who orders or maintains confinement *incommunicado* shall be dismissed from his post, without prejudice to the application of the penalties prescribed by the law.

Article 52. No committal order may be issued without previous summary information that an offence has been committed or without reasonable grounds for suspecting that the person in custody has committed, or has been an accomplice in the commission of, the offence.

Article 53. Everyone has an inalienable right to defend himself and his rights. No one may be judged by a summary commission or by special courts.

No one may be condemned without having been summoned, heard and convicted by legal process before a competent and pre-established court or authority in which the substantive forms and guarantees of process are observed; nor may his rights be temporarily impaired except by virtue of a procedure in which these requirements are fulfilled.

Article 54. The death penalty shall be imposed only in exceptional circumstances. It may not be imposed on presumptive grounds, nor may it be applied to women or minors, nor to persons over seventy years of age, to persons convicted of political offences nor to convicted persons whose extradition has been granted on this condition.

Against sentences imposing the death penalty all the appropriate legal remedies shall be admissible, including those of appeal and petition for mercy. These two remedies shall not be admitted in cases of invasion of the territory, state of siege of a fortified place or town, or mobilization on the occasion of war.

The penalty shall be carried out only after all remedies have been exhausted.

Article 55. The prison system shall promote the reformation and social readaptation of the inmates. Penal sentences shall be served solely in establishments intended for the serving of terms of imprisonment. Places intended for remand and sentences of imprisonment are civil institutions.

No person held in custody or imprisoned may be prevented from satisfying his natural func-

tions. No physical or moral tortures, cruel treatment, infamous punishments or acts, harassment or coercion may be inflicted upon him, nor may he be compelled to undertake labour prejudicial to his health or incompatible with his physical constitution or with his dignity, nor may he be subject to illegal exactions.

Minors shall not be considered as delinquents and shall not on any account be sent to prisons or establishments intended for adults, but must be placed in appropriate institutions and under the care of suitable persons, so that they may receive integral education and medical and social assistance and may be readapted to society. A special law shall provide for the treatment of minors of irregular conduct and for the protection of destitute infants.

Adequate institutions shall be established for the enforcement of the provisions of this article.

Article 56. Any official or public employee who gives any order contrary to the provisions of the preceding article, and any subordinate who carries out such order, shall be deprived of his office, shall be permanently disqualified for the discharge of any public office or employment, and shall suffer the applicable legal sanction.

The heads of prisons and places of detention shall be responsible, as principals, for any act of torture, cruel treatment or infamous punishment inflicted on the convicts or prisoners in the establishment under their charge and, even where a subordinate is seen to be directly responsible, shall be punished as accomplices or accessories, unless, immediately upon becoming cognizant of the fact, they have taken the necessary steps to prevent it or to cause it to cease and have instituted a prosecution against the persons committing the act.

Any warder who makes unwarranted use of arms against a person in custody or a prisoner shall be liable under the criminal law. No bar of limitations shall be admitted to proceedings for an offence committed in these circumstances.

Article 57. The home is inviolable. No one may enter the domicile of another without permission from the person residing there, except on a written order by a competent judge, and then not before 6 a.m. or after 6 p.m. The law shall determine the formalities and the exceptional cases in which forcible entry is permitted, and if, on such occasion, a search of documents and effects is carried out, this procedure must always be performed in the presence of the person concerned, his authorized agent, or an adult member of his family, or, in their default, before two witnesses, resident of the place, or of recognized reliability.

Article 58. The correspondence of all persons and their documents and private books are inviolable. They may be seized or examined only by virtue of an order by a competent judge and with the formalities prescribed by the law.

The authorities who discharge the duties of tax inspectors may likewise, on written order by a competent judge, and in specific cases, inspect and seize documents and private books relating to the payment of taxes, such seizure or inspection in every case to be undertaken in the presence of the person concerned or his authorized agent, or, in their default, an adult member of his family, or two reliable witnesses, residents of the place. It is an offence to disclose the amount or the source from which the taxes are derived, as also any profits, losses, costs or other information concerning individual or corporate taxpayers or their accounts.

No documents removed and no correspondence intercepted shall constitute authentic evidence in court proceedings.

Article 59. Everyone is free to enter the territory of the Republic, to remain in it, pass through it and leave it, subject only to such limitations as are established by the law. No one may be obliged to change his residence or domicile except by order of the competent authority, in accordance with the requirements specified by the law.

Article 60. No Guatemalan may be expatriated or prohibited entry into the territory of the Republic, nor may he be denied a passport or other identity documents.

Guatemalans may enter and leave the country without fulfilling the visa requirement.

The law shall determine the liabilities incurred by persons who infringe this provision.

Article 61. Guatemala recognizes the right of asylum and offers it to politically persecuted persons who resort to its standard, provided that they respect the national sovereignty and laws. The extradition of persons accused of political offences is prohibited, and in no case shall an application be made for the extradition of Guatemalans who take refuge in another country for political reasons. No Guatemalan may be surrendered to a foreign government for judgement or punishment, except for the crimes specified in international treaties in force in Guatemala.

The extradition of persons accused of crimes under the ordinary law in conjunction with political offences is similarly prohibited.

When it is decided to expel a person enjoying asylum, such person shall not be surrendered to the country whose government is prosecuting him.

Article 62. The inhabitants of the Republic have the right to address, individually or collectively, petitions to the authorities, who must take a decision on them without delay, in conformity with the law, and must inform the petitioners of their decisions.

No one except Guatemalans may address political petitions, and a decision must be taken on such petitions within a period not exceeding eight days. If the authorities take no decision within this period, the petition shall be deemed to have been denied, and the petitioner may have recourse to the legal remedies.

Petitions of any other nature addressed to the administrative authorities must be decided with-

in a period not exceeding thirty days after the appropriate administrative procedure has been completed. If this is not done, the petitioner may file a writ of *amparo* requiring the authorities to make their decision within a definite time limit.

The armed forces may not deliberate or exercise the rights of petition and vote.

Article 63. The right of peaceful assembly without arms is recognized.

The rights of assembly and public demonstration may not be restricted, diminished or confined, and the law shall regulate them with the sole purpose of safeguarding the public peace.

Religious demonstrations outside churches are permitted, and are governed by the law.

Article 64. The inhabitants of the Republic have the right to associate freely for the various purposes of human life in order to promote, exercise and protect their rights and interests, and more particularly those established by the Constitution.

The formation and functioning of groups acting in agreement with, or in subordination to, international bodies which advocate the communist ideology or any other totalitarian system are prohibited.

Article 65. The expression of thought is free, without prior censorship.

Any person who abuses this right by a failure to respect private life or morality shall be answerable to the law.

Denunciation, criticism or censure of officials or public employees for strictly official acts performed in the exercise of their functions do not constitute the offences of slander or libel. Any official who holds that he has been aggrieved may demand that a court of honour, composed in the form determined by the law, shall declare that the publication concerning him is based on falsehoods or that the charges against him are groundless. The decision justifying the aggrieved official must be published in the same organ of the press in which the offending publication appeared. Officials and public employees may not be members of the aforesaid court.

Printing establishments, radio broadcasting stations, television stations, and any other means of expression may not be seized, confiscated or attached, closed or their operations interrupted by reason of a criminal or civil offence relating to the expression of thought.

The crimes or offences mentioned in this article shall be heard by a jury in special proceedings and a law with constitutional effect shall determine all matters relating to this right.

Article 66. The freedom to practise every religion is guaranteed.

Every person has the right to practise his religion or belief, both in public and in private, by means of teaching, worship and observance, subject only to considerations of maintaining the public peace, morality and order and the respect due to the emblems of the Nation.

Religious associations and societies may not intervene in party politics nor may ministers of religion take an active part therein.

Article 67. The Catholic Church and other confessions are recognized as legal persons, and may acquire and possess property and dispose of it, provided that they devote it to religious, social welfare or educational purposes. Their real property shall enjoy exemption from taxes, levies and dues.

The personality of churches shall be determined by their rules of formation or articles of association.

The State shall issue to the Catholic Church title deeds for the real property which it owns at this time and holds in peaceful possession for its own purposes.

Properties registered in the name of third persons and properties registered in the name of the State, which have been devised for its service may not be transferred.

Article 68. The right to bear arms shall be regulated by the law. It is not a crime or offence to keep at home arms for personal use which are not those prohibited by law.

Article 69. Private property is guaranteed.

The State has the obligation to ensure to property owners the prerequisites for the development and use of their properties. The law shall determine the rights and obligations of property owners.

The right to property may not be restricted in any form by reason of a political offence. The confiscation of property and confiscatory or excessive fines are prohibited. Fines may not exceed the amount of any tax unpaid.

Article 70. Every person may dispose freely of his property in accordance with the law. Entails are prohibited.

In the economic régime of marriage or *de facto* union, each spouse or cohabitor has the free disposal of the properties entered in his name in the public registers, except for any limitations which are expressly recorded in the registration of each property. In every case, the spouses or cohabitors shall be responsible to each other for any disposal they may make of properties held in common.

Article 71. In specific cases private property may be expropriated for duly proved reasons of collective utility, public benefit or public interest. The expropriations must be executed in accordance with the procedures laid down by the law, and the property concerned shall be appraised by experts on the basis of its current value.

In valuing a property all the elements, circumstances and conditions which determine its real price shall be taken into account, and the valuers shall not be bound solely by declarations or official registers or documents previously existing.

Compensation must be paid in advance and in legal tender, unless some other form of indem-

nification is agreed. Property may be occupied, intervened or expropriated without prior indemnification only in case of war, national disaster or serious disturbance of the peace, but the compensation must be made effective immediately the emergency has ceased.

The property of States at war with Guatemala, or of their nationals, may be expropriated, occupied or intervened without the formalities required in the preceding paragraph. A law shall regulate this matter.

No indemnification whatever may be demanded for the constitution of easements of public utility, except in compensation for damages actually caused to the patrimony.

In the case of the expropriation of land for the construction of paths or roads, the indemnification need not be paid in advance. The law shall determine the form and method of payment.

In order to execute works for national electrification, any area of the property affected deemed essential may be occupied, but the assessed valuation must be deposited in advance in a banking institution through the authority concerned with the matter, in conformity with the law.

Article 72. Inventors enjoy the exclusive ownership of their work or invention for a period not exceeding fifteen years, provided that the requirements established by the law are fulfilled.

Authors enjoy the ownership of their works in conformity with the law and the international treaties.

Article 73. The freedom of industry, of commerce and of labour is recognized, except for such limitations as may be imposed for social reasons or reasons of national interest by the laws, which shall make all necessary provision for the greater stimulation and expansion of production.

Article 74. Every person has free access to the courts in order to litigate in conformity with the law.

Aliens may resort only to the diplomatic channel in the event of a denial of justice. The mere fact that a judicial decision is contrary to their interests shall not be deemed such denial. In every case they must have exhausted the legal remedies established by the Guatemalan laws.

Article 75. All acts of the administration are public, and the persons concerned have the right at any time to obtain such reports and copies as they request and the production of any files they wish to consult, unless diplomatic or military affairs are involved or information supplied by private persons under a guarantee that it will remain confidential.

Article 76. Appearance in response to a summons issued by any authority, official or public employee shall not be obligatory if its purpose is not specifically stated in the summons.

Article 77. The rights and guarantees conferred by the Constitution do not exclude others which, although they do not expressly appear in it, are inherent in the human person.

Any laws or administrative measures, or any other kind of provisions, regulating the exercise of the rights guaranteed by the Constitution shall be null and void *ipso jure* if they diminish, restrict or evade them.

Article 78. Action for the prosecution of violators of the rights and guarantees proclaimed in this Title is open to the public, and may be exercised, without bond or formality of any kind, by simple denunciation.

Adequate resistance for the protection of the rights and guarantees set forth in the Constitution is legitimate.

Chapter II

Habeas Corpus and Amparo

Article 79. Anyone who is unlawfully imprisoned, detained or in any other way restricted in the enjoyment of his individual liberty, or is threatened with its loss, or is suffering harassment, even though he may have been imprisoned or detained on good legal grounds, has the right to demand that he be immediately produced before the courts of justice to obtain either the restoration of his liberty or the cessation of the harassment or the removal of the coercion to which he has been subjected. If the court orders that the person unlawfully confined be discharged, he shall be released forthwith. When the person concerned so demands, or the judge or the court deems it appropriate, the person in custody shall be produced at the place at which he is detained, without prior notice or notification of the parties. There shall be no demur about the production in person of the detainee on whose behalf a writ of *habeas corpus* has been presented. The authorities who ordered the concealment of the person in custody, or refused to produce him to the appropriate court, or in any other manner frustrated this guarantee, as well as the executant agents, shall be deemed to have rendered themselves liable to the penalties for the offence of assault and false arrest (kidnapping) and shall be punished in conformity with the law.

Article 80. Every person has the right to petition for *amparo* and may request:

1. To be maintained in, or restored to, the enjoyment of the rights and guarantees established by the Constitution.

2. To obtain a declaration in specific cases that a law, regulation or decision, or the act of an authority has no binding force on him, inasmuch as it contravenes or restricts any of the rights guaranteed by the Constitution.

3. To obtain a declaration in a specific case that any non-statutory provision or decision of the Congress of the Republic is not applicable to the petitioner, inasmuch as it violates a constitutional right.

4. In the other cases expressly established by the Constitution.

In administrative matters the *amparo* shall be applicable when the authorities, unlawfully or by

abuse of power, issue a regulation, order, decision or measure which causes injury to the petitioner, or puts him in reasonable apprehension of suffering such injury, or makes unreasonable demands upon him, provided that he has no administrative remedy against the regulation to which the objection is raised, or that there is no bar to execution or any other legal remedy for the injury alleged.

Article 81. The *amparo* is not applicable:

1. In judicial cases, with respect to the parties and any persons intervening.

Nevertheless, where sentence has not been pronounced, a petition of *amparo* may be filed against any vice of procedure into which the Supreme Court of Justice may fall in matters submitted to it for hearing.

2. Against decisions made in *amparo* proceedings.

3. Against acts not appealed by the aggrieved party.

4. Against health measures and measures taken for the purpose of preventing or averting public disasters.

Article 82. A declaration that a petition of *amparo* is applicable shall have the following effects:

1. To stay, so far as the petitioner is concerned, the law, regulation, decision or act of the authorities to which objection is raised and, where appropriate, to restore the legal *status quo* or to annul the order in question.

2. In matters covered by the third paragraph of article 62, if the authority does not decide within the time-limit set by the Court of *Amparo:*

(*a*) The person concerned may appeal to the authority immediately superior, or, where appropriate, to the Tribunal of Administrative Law, for a decision; and

(*b*) If there is no official of higher rank, or if, by the nature of case, procedure by administrative law provides no remedy, the official responsible shall be *ipso facto* removed from his office on the next day following the date of the expiry of the time-limit set by the Court of *Amparo,* unless he is an elected official, in which case he shall be wholly liable for all damages.

3. Where the act complained of is irreparable or where its effects have ceased, the Court of *Amparo* shall hand down a decision to that effect and shall order that the appropriate civil or criminal proceedings be instituted.

Article 83. Matters relating to the *amparo* shall always receive a broad judicial interpretation. The courts shall be answerable if they refuse to admit an appeal or to take a decision on the facts, except in cases falling under the first subparagraph of article 81, paragraph 1. It is within the discretion of judges who hear appeals of *amparo* to exonerate the petitioner from the burden of proof whenever, in their judgement, proof is not required. When the competence of the court before which such cases are brought is not clearly established, the Supreme Court of Justice shall make a summary judgement on the case.

Article 84. Motions for *habeas corpus* and petitions of *amparo* shall be initiated by specific appeal procedure. A constitutional law shall regulate the form and the requirements for its exercise and shall determine the courts before which they are to be brought, as well as all related matters, in accordance with the principles established in the Constitution.

Demands for the production of the person may be presented by the person concerned or by any other person and shall not be subject to requirements of any kind.

Any action which in any manner hinders, restricts or obstructs the exercise of these procedures or the application of the legal provisions guaranteeing them is a punishable offence. What is decided in such cases may not be relied on in a plea of *res judicata.*

TITLE III

SOCIAL GUARANTEES

Chapter I

THE FAMILY

Article 85. The State shall promulgate the laws and provisions requisite for the protection of the family as the fundamental element of society, and shall see to the fulfilment of the obligations deriving from them. It shall promote the organization of the family on the legal basis of marriage. The officials determined by the law shall certify this act. Ministers of religion so authorized by the competent administrative authority may likewise certify it.

Motherhood, childhood, old age and disability shall receive special protection.

Article 86. The law shall determine the protection to be given to women and children of *de facto* unions and all matters pertaining to the form in which their recognition may be obtained.

All children are equal before the law and have identical rights.

The law shall establish the evidence required for affiliation.

Article 87. The State shall watch over the physical, mental and moral health of minors; it shall pass the laws and create the institutions necessary for their protection and education.

Social welfare centres established and supported by private bodies are declared to be of public utility.

The laws for the protection of minors are matters of public policy.

Adoption for the benefit of minors is instituted. Adopted children acquire the legal status of children of the persons adopting them.

Article 88. The law shall determine the family patrimony, which shall not be open to attach-

ment, and shall establish a preferential tax régime for large families. The State shall promote family home-ownership for the benefit of the Guatemalan family.

Article 89. Refusal to pay maintenance for minor or incapacitated children, destitute relatives or incapacitated spouses or brothers, where the obligee is able to provide it, is a punishable offence, as also any evasion, in any manner whatsoever of the fulfilment of this obligation.

Article 90. The campaign against alcoholism and any action against any other factor in the disintegration of the family are declared to be of social interest.

Chapter II

CULTURE

Article 91. The promotion and dissemination of culture in all its manifestations are primary obligations of the State. The principal purposes of education are the integral development of the personality, its physical and spiritual improvement, the heightening of the individual responsibility of the citizen, the civic progress of the people, the elevation of the patriotism and the respect for human rights.

Article 92. The family is the source of education, and parents have the right to choose the education of their under-age children. The foundation and maintenance of educational establishments and cultural centres, public and private, and the raising of the economic, social and cultural status of the teaching profession are declared to be of public utility and necessity. The training of teachers is a cardinal function of the State.

Article 93. The freedom of teaching and academic standards are guaranteed.

Religious teaching in the public schools is optional. It may be imparted within the regular time-table, both in these establishments and in private establishments.

Civic, moral and religious education is declared to be of national interest. The State may contribute to the support of religious education without any form of discrimination.

Article 94. Primary education is compulsory for all the inhabitants of the country within the age-limits fixed by the law. No charge is made for the education imparted by the State.

Article 95. Private educational centres shall function under inspection by the State and are obliged to fulfil at the least the official plans and programmes if their grades are to be recognized as valid. As centres of culture, they shall enjoy the tax exemption determined by the laws.

Article 96. To make the country literate by means of the fundamental education of the people is declared to be a matter of national urgency.

It is a social obligation to contribute to the literacy campaign. The State must organize and promote it with all the necessary resources.

Article 97. Industrial and agricultural undertakings situated outside urban centres and owners of rural estates are obliged to establish and support, in accordance with the law, schools for their school population imparting a minimum standard of teaching, in conformity with special programmes.

Article 98. Every person has the right to education. Technical instruction and vocational training are equally accessible to all.

The State shall maintain and promote centres for basic teaching and for diversified studies, as well as institutions for raising the cultural level of the Nation; it shall award advanced or specialized fellowships to students and professional persons who merit them by their dedication and capabilities; it shall promote physical education, and shall protect sport in all its manifestations.

...

Article 109. Typically Guatemalan popular crafts and industries shall enjoy the special protection of the State, with a view to the preservation of their authenticity, and shall receive the credit facilities necessary to promote their production and marketing. The national art and folklore, in all their manifestations, shall enjoy similar protection, and shall be cultivated in public and private educational centres.

Article 110. The State shall promote a policy conducive to the social and economic betterment of the indigenous groups, with a view to their integration into the national culture.

Chapter III

LABOUR

Article 111. Labour is a social obligation and every person has a right to work. Vagrancy is a punishable offence. The national labour régime must be constituted in conformity with the principles of social justice.

Article 112. In order to foster sources of labour and to stimulate the creation of every kind of productive activity, the State shall provide adequate protection for capital and private enterprise, enhance credit institutions and use every means at its disposal to combat unemployment.

...

Article 115. The State shall be alert to see that the living quarters of the workers are adequate and fulfil health requirements. It shall promote the construction of houses and the establishment of housing developments for workers.

Article 116. The rights set out in this chapter constitute minimum guarantees for the workers, which may not be renounced. They may be improved by means of individual or collective contract and in the form established by the law. Consequently, any stipulations that imply any diminution or evasion of the rights recognized in favour of the worker in the Constitution, by the law, by regulations or by any other provisions relating to labour shall be null and void *ipso jure* and shall not be binding on the workers, even though they are embodied in a labour agreement or in any other instrument.

...

TITLE V

LEGISLATIVE ORGAN

Chapter I

CONGRESS

Article 156. The legislative power is vested in the Congress of the Republic.

Article 157. The Congress is composed of deputies elected directly by the people by universal suffrage.

...

Article 163. An elected deputy must be a native Guatemalan of the classes defined in article 5 of this Constitution, be in enjoyment of his rights as a citizen and be over thirty years of age.

Article 164. The following may not be deputies:

1. Officials of the Executive and Judicial organs or employees thereof, or employees of the Legislative Organ.

Persons performing the functions of teacher and professional persons serving in social welfare establishments are excepted from the aforesaid prohibition.

2. Contractors for public works or undertakings which are paid for out of funds of the State or a municipality, their guarantors, and any persons who have claims pending in connexion with such works.

3. The relatives of the President and the Vice-President of the Republic within the fourth degree of consanguinity or second of affinity.

4. Any person who, having been condemned in bankruptcy proceedings by a final sentence, has not discharged his liabilities.

5. Soldiers on active service.

6. Any person who represents interests of companies or individuals operating any public service.

7. The ministers of any religion or denomination.

If at the time of his election, or subsequently, the person elected is found to be included in any of the classes prohibited in this article, his seat shall be declared vacant, but if he is among those classified in paragraph 1, he may opt between his occupation and the post of deputy. The election as deputy of an official who exercises jurisdiction in the electoral district which put forward his candidacy, or exercised it three months before the date on which the election was called for, is null and void.

The post of deputy is compatible with the discharge of temporary or special diplomatic missions and with the representation of Guatemala at international congresses.

Article 165. Deputies shall remain in the exercise of their functions for a period of four years. They may not be re-elected until another period has elapsed. They may be re-elected only once.

The Congress shall elect its officers each year.

...

TITLE VI

EXECUTIVE ORGAN

Chapter I

PRESIDENT OF THE REPUBLIC

Article 181. The executive functions are exercised by the President of the Republic, who represents the national unity, is the head of State and shall always act with the ministers, in council or separately with one or more of them. He shall co-ordinate the acts of the Executive Organ.

Article 182. The President of the Republic shall be elected by the people, by universal suffrage, by absolute majority of votes and for a period of four years, which may not be extended.

Article 183. An elected President must:

1. Be a native Guatemalan in the classes defined in article 5 of this Constitution and must at no time have adopted any foreign nationality or citizenship.

2. Be more than forty years of age.

3. Be in full enjoyment of his rights as a citizen.

Article 184. The following may not be elected to the office of President:

1. The leader or the chiefs of a *coup d'état,* armed revolution or similar movement which disturbs the order established by this Constitution, or any person who, in consequence of such events, has assumed the office of head of State for the period during which the constitutional régime has been interrupted, or the period next following.

2. Any person who is exercising the Presidency of the Republic at the time when the election for that office is held, or has exercised it during any period within the six months preceding the election.

3. The relatives, within the fourth degree of consanguinity or second of affinity, of the President or the Vice-President of the Republic, when the latter is exercising the functions of the Presidency, and the relatives of those referred to in paragraph 1 of this article.

4. Any person who has been a minister of State or has held a high military command during any period within the six months preceding the election.

5. The ministers of any religion or denomination.

...

TITLE VII

JUDICIAL ORGAN

Chapter I

GENERAL PROVISIONS

Article 240. Justice is imparted in conformity with the Constitution and the laws of the Republic. The courts are vested with the power to

judge and to require the execution of the judgement. The other organs of the State must furnish the courts of justice with any assistance they may request for the enforcement of their decisions.

The judicial function is exercised exclusively by the Supreme Court of Justice and the other courts of ordinary and special jurisdiction.

The administration of justice is obligatory, gratuitous and independent of the other functions of the State. It shall be public, save only where morality, the security of the State or the national interest otherwise require.

...

Chapter IV

COURTS OF AMPARO

Article 260. The Special Court of *Amparo* shall be composed of the President of the First Chamber of the Court of Appeal, or, in his default, by the presidents of the other Chambers in numerical order and six assessors of the Chambers themselves, who shall be designated by ballot from among the regular assessors and their alternates. The Chamber to which the designated president belongs shall conduct the ballot.

It is the function of this court to hear petitions of *amparo* against the Supreme Court of Justice or any of its members and against the Congress of the Republic and the Council of State for acts and decisions which are not simply matters of legislation.

Article 261. The law shall regulate all matters pertaining to the organization and functioning of the other courts which have to decide on writs of *amparo* presented pursuant to the principles laid down in the Constitution.

...

TITLE VIII

AMENDMENTS TO THE CONSTITUTION

Sole Chapter

Article 266. The Congress of the Republic and the Council of State, meeting in Assembly, may decree, *proprio motu,* by the vote of two-thirds of the total of the members of both bodies, any amendments to the Constitution which may be necessary for Guatemala to become part of the total or partial union of Central America. Any amendments for the reincorporation of Belize in the national territory may be made by decree in the same manner.

For any other amendment of the Constitution the Congress of the Republic, by a vote of two-thirds of the members composing it, must convene a National Constituent Assembly, and must specify the article or articles to be amended, except as provided in the article following.

Article 267. Article 14, paragraph 4, article 33, article 166, paragraph 10, and articles 182 and 185 may not be amended by decree, nor may any of the articles which refer to the principle of non re-election to the office of President of the Republic. Nothing may be done to suspend the effects of these articles or in any way to impair their efficacy or force.

GUINEA

DECREE No. 90 OF THE OFFICE OF THE PRESIDENT OF THE REPUBLIC, 5 APRIL 1965 [1]

Art. 1. An Administrative Tribunal and a Jurisdictional Conflict Court attached to the Office of the President of the Republic shall be established.

...

TITLE I

ADMINISTRATIVE TRIBUNAL

Chapter II

JURISDICTION

Art. 5. The Administrative Tribunal shall have jurisdiction over administrative disputes arising from an action performed on behalf of the Government or the government administration or from the performance of a general or local public service and, in general, over all disputes that are subject to administrative proceedings.

Art. 6. Before being brought before the Administrative Tribunal, any appeal against an administrative decision must first be submitted to the official who made the decision and then to his immediate superior.

Art. 7. No administrative appeal shall lie against acts of the Head of State.

Art. 8. The judicial courts shall have no jurisdiction over disputes that are subject to administrative proceedings.

...

TITLE II

JURISDICTIONAL CONFLICT COURT

...

Chapter V

JURISDICTION

Art. 26. The Jurisdictional Conflict Court shall settle conflicts of jurisdiction and disclaimers of jurisdiction as between the administrative and judicial courts and matters arising from conflicting decisions of such courts.

Art. 27. The purpose of conflict of jurisdiction proceedings is to prevent a judicial court from hearing a case which comes within the jurisdiction of the Administrative Tribunal.

Art. 28. A plea of conflict of jurisdiction may consequently be brought only before a judicial court.

...

[1] *Journal officiel de la République de Guinée*, No. 9 of 1 May 1965.

DECREE No. 111 PRG OF 28 APRIL 1965 GOVERNING TRANSFERS [2]

TITLE I

TRANSFERS

Introductory article. The present provisions are designed to govern the various transfers which the Exchange Office of the Central Bank of the Republic of Guinea is responsible for examining.

Chapter I

TRANSFERS OF SALARIES AND WAGES

Art. 1. Expatriate workers engaged in an occupation or profession in the Republic of Guinea shall have the right to transfer a portion of their wages or salaries each month to their country of origin.

Art. 2. The term "expatriate worker" shall mean a worker of foreign nationality, born and residing in a foreign country, who has come to Guinea for the sole purpose of engaging in an

[2] *Ibid.*, No. 10, of 15 May 1965.

occupation or profession which was expressly defined when he entered the Republic of Guinea.

The following shall be deemed to be expatriate workers:

(*a*) Foreign workers who come to Guinea under an assistance agreement concluded between their country and the Republic of Guinea;

(*b*) Foreign workers who have signed individual work contracts with the administration of Guinea;

(*c*) Workers who have received from a Guinean enterprise or firm an employment contract which has been endorsed in advance by the Minister of Labour and the Governor of the Central Bank of the Republic of Guinea.

Art. 3. Persons born in Guinea who have taken on a foreign nationality shall not be deemed to be "expatriate workers".

Art. 4. The provisions of articles 1 and 2 above shall not apply to:

(*a*) Guinean nationals;

(*b*) Persons who have taken on Guinean nationality;

(*c*) Persons who have become Guineans by marriage;

(*d*) Persons who have come to Guinea for a reason other than discharging their obligations under a duly approved employment contract.

Art. 5. Workers employed by a foreign enterprise which has been contracted to carry out a particular project, the cost of which has been established in foreign currency, shall not be entitled to make transfers.

Such workers shall be the responsibility of the foreign enterprise which brought them to the Republic of Guinea.

...

Chapter V

TRANSFERS OF INDUSTRIAL AND BUSINESS PROFITS

I. *Scheduled enterprises*

Art. 25. The term "scheduled enterprises" shall mean enterprises established under the Guinean Investments Code.

Art. 26. Scheduled enterprises may transfer 20 per cent of their net annual profits.

Art. 27. Net profits shall be deemed to be the profits declared to the administration of the Office of Miscellaneous Taxation.

...

II. *Partly scheduled enterprises*

Art. 32. Partly scheduled enterprises shall be deemed to be the enterprises defined in article 4 of the Investments Code which provides that: "In addition to new enterprises, existing enterprises may also be eligible for the benefits of the preferential system if their activities are substantially expanded, but then only in respect of such expansion".

Art. 33. Partly scheduled enterprises may transfer 20 per cent of the net profits in respect of that portion which is eligible for the benefits provided for in article 4 of the Investments Code.

For this purpose, they shall keep supplementary accounts showing the profits accruing from the operations of the scheduled part.

...

HAITI

NOTE [1]

GENERAL COMMENTS

In 1965 no constitutional reforms or revisions were enacted, no treaties or conventions ratified and no judicial decisions published concerning human rights. On this last point it should be noted that the *Bulletin des Arrêts de la Cour de Cassation* has not been published since 1948 and that the publication of law reviews also ceased several years ago.

The only binding provisions adopted on the subject of human rights are an Act, followed by an Order concerning its application, and two Decrees. One of the Decrees was issued by the Legislative Chamber in accordance with the Constitution; the other, promulgated in virtue of the first by the Executive Power, established a new institution. These measures are discussed below in chronological order, numbered I, I *bis*, II and III, and their essential preambular operative provisions are reproduced. They relate directly to the provisions of articles 25, 29 and 25, respectively, of the Universal Declaration of Human Rights.

I. ACT OF 26 JULY 1965 ESTABLISHING THE NATIONAL COMMITTEE FOR THE CAMPAIGN AGAINST MALNUTRITION UNDER THE NATIONAL COMMISSARIAT FOR DEVELOPMENT AND PLANNING

This Act was adopted to give effect to the recommendations of a national seminar held at Port-au-Prince in June 1965, on the Haitian Government's initiative and with the aid of the Interamerican Children Institute, whose headquarters are at Montevideo. The purpose of the seminar was to consider how the problem of malnutrition specifically affected Haiti and how it should be solved. While other international organizations—the Unitarian Universalist Service Committee (UUSC), the World Health Organization (WHO), the Pan-American Health Organization (PAHO), the Food and Agriculture Organization of the United Nations (FAO) and the William Waterman Fund (WWF) were also represented or took part, the Interamerican Children Institute extended particulary active co-operation through its experts, who worked with Haitian experts and acknowledged their competence. In addition the Director-General of the Interamerican Children Institute personally attended the first intensive seminar on nutrition, held at Port-au-Prince from 7 March to 7 May 1966, to train Haitian staff pursuant to one of the recommendations of the 1965 seminar.

The main preambular and operative provisions of the Act are set out below.

The President of the Republic,

Having regard to the Decree of 18 January 1966 which provides for the establishment of an autonomous agency to be known as the National Commissariat for Development and Planning,

Having regard to the final conclusions in which the first National Seminar on Nutrition, held at Port-au-Prince from 30 May to 4 June 1965, proposes to the Government of the Republic that a special organ should be established under the said Commissariat to perpetuate the spirit of these regional meetings through a scientific, useful and genuinely practical approach,

Acting on the report of the Secretaries of State for Public Health and Population, Agriculture, Natural Resources and Rural Development, Finance and Economic Affairs, National Education, Labour and Social Welfare,

And on the advice of the Council of Secretaries of State,

Has proposed,

And the Legislative Chamber has adopted, the following Act:

Article 1. An organ to be known as the National Committee for the Campaign against Malnutrition shall be established under the National Commissariat for Development and Planning to promote, encourage and guide the campaign against malnutrition for purposes both of prevention and treatment, and in particular to prepare studies, propose research and coordinate proposals and action designed to expose, reduce or eradicate this social scourge.

Article 2. The National Committee for the Campaign against Malnutrition composed of representatives of the Departments of Public Health and Population, National Education, Agriculture, Natural Resources and Rural Development, Finance and Economic Affairs, Labour

[1] Note furnished by Dr. Clovis Kernisan, Dean of the Faculty of Law at the University of Port-au-Prince, government-appointed correspondent of the *Yearbook on Human Rights.*

and Social Welfare and of other interested agencies, shall also endeavour:

To demonstrate as effectively as possible the importance of the malnutrition problem;

To define precisely, through research and inquiry, every aspect of the malnutrition problem; to learn its causes and effects in the various geographical areas of the country, and to propose to the Chief of the Executive Power the most effective means of eliminating the factors which keep this social scourge in being;

To co-ordinate existing programmes on nutrition and the feeding of under-nourished groups and to decide what additional activities are required in order to promote economic development and to raise the level of living of the community;

To ensure that nutritional policy is consistent with the general purposes of development and planning;

To request, through the competent national agencies, the co-ordinated mobilization of national resources and contributions from international organizations in order to speed up the achievement of the appointed productive purpose.

Article 3. The members of the National Committee for the Campaign against Malnutrition shall be appointed by the Life President of the Republic on the recommendation of the Secretary of State for Labour and Social Welfare after an opinion, accompanied by a statement of reasons, has been submitted by the National Commissariat for Development and Planning.

Article 4. They shall submit their suggestions and reports for the august consideration of the Life President of the Republic through the Secretary of State for Labour and Social Welfare.

Article 5. They shall receive no remuneration for professional services rendered to this organ.

I *bis. Administrative Order of 17 September 1965* appointing sixteen Haitian citizens as members of the National Committee for the Campaign against Malnutrition in accordance with article 3 of the above Act.

II. *Decree of the Legislative Chamber dated 20 September 1965,* issued by virtue of articles 49, 68, 90, 196 and 197 of the Constitution and explained by several preambular provisions. The main such provision points out " that, during the parliamentary recess, political and economic measures may, by their very nature, require prompt and vigorous action by the authorities and that the Chief of the Executive Power should be equipped with legal instruments empowering him to take all such measures as he may deem necessary to preserve a climate of peace and security within the Haitian Family, to defend the territory and sovereignty of the State, to keep the public finances on a sound footing and to safeguard the prestige of the nation. "

Article 1 of this Decree enumerates articles 17, 18, 19, 20, 25, 31, 34, 48, 70, 71, 72, 93 (7th paragraph), 98, 109, 110, 119 (2nd paragraph), 122 (2nd paragraph), 147, 148, 151, 152, 190 and 195 of the Constitution in force (see this Constitution in the *Yearbook on Human Rights for 1964*); these articles provide the guarantees which have been suspended.

Article 2 grants the Chief of the Executive Power, for a period of six months, full authority to adopt, by Decrees having statutory force, all such measures as he may deem necessary for the purposes stated in the preamble as quoted above.

III. *Legislative Decree of 8 November 1965* issued by the President of the Republic by virtue of the full powers vested in him, for a period of six months, by the Legislative Chamber on 20 September 1965 as mentioned under No. II above.

This Presidential Decree is very important from the standpoint of social security. It provides the technical measures required to keep abreast of one of the latest advances in the social sciences. It institutes old-age insurance for all workers in Haiti, establishes a suitable institution to implement the scheme and appropriates the funds needed to begin operations.

The main preambular provisions on which the Decree is based and its essential operative provisions are accordingly reproduced below.

The Chief of the Executive Power issued the Decree considering:

1. That it is the duty of the State to guarantee a life in keeping with the great principles of humanism by building a just, free and economically sound society capable of ensuring harmony between labour and capital;

2. That every régime must conform essentially to principles of justice and social security designed to ensure for every member of the community an existence worthy of a human being;

3. That it is a function of the State to provide, by establishing an appropriate system of social security, effective protection against the risks of old-age and infirmity for old workers who, through a life of labour, have contributed to the development of the national economy;

4. That special protection should be given to the family, which is the basis of society, and to women, children, the aged and the infirm, by broadening old-age insurance to include all workers.

On the report of the Secretary of State for Labour and Social Welfare,

And after deliberation in the Council of Secretaries of State,

The President of the Republic thereby decrees as follows:

Chapter I

INSTITUTIONS AND DEFINITIONS

Article 1. The National Old-Age Insurance Office (ONA) shall be a mixed institution in the public interest operating under the supervision of the Department of Labour and Social Welfare

and possessing legal personality. Its headquarters shall be at Port-au-Prince; offices may be established in provincial towns in accordance with requirements and with the resources of the institution.

Article 2. The National Old-Age Insurance Office shall provide every worker who has reached the required age and completed the required number of years of service with a retirement pension which will enable him to live under decent conditions when he is no longer capable of working. The said retirement pension shall be revertible under the terms and conditions laid down by this Decree.

Article 3. Those participating in the establishment, financing and operation of the institution shall be:

(*a*) The Haitian State;

(*b*) The wage-earners;

(*c*) The employers;

(*d*) The Banque Commerciale d'Haiti.

Article 4. A. The contribution of the Haitian State shall consist of:

1. The sum of 500,000 gourdes to be paid into the working capital fund of the institution in its initial stage of operation;
2. A building to be donated to the institution for use as a Medical Centre for the treatment of insured persons in accordance with article 34 of this Decree;
3. Financial assistance if, in the course of the institution's operations, its own funds prove insufficient to meet its obligations.

B. The contributions of the employers and wage-earners shall be those prescribed for them by article 29 of this Decree.

C. The participation of the Banque Commerciale d'Haiti shall consist of:

1. An advance, in an amount not exceeding 500,000 gourdes, to cover the initial cost of establishing the institution;
2. The installation and equipment of the Medical Centre;
3. The collection of contributions and a guarantee of the payment to insured persons of such benefits as may be due to them in the form of pensions, bonuses, refunds, etc.

Article 5. The operation of the mixed institution shall be authorized by the Haitian State in accordance with its social security policy.

Article 6. For the purposes of this Decree the following definitions shall apply:

(*a*) *Employer:* any natural person or any legal person constituted under civil or private law who by virtue of a labour contract engages, for wages, the services of another person in the performance of specific work;

(*b*) *Employee:* Any person who, for wages, renders services of any description to an employer in the performance of specific work.

Chapter II

Scope

(a) *Compulsory old-age insurance*

Article 7. National persons domiciled in Haiti and gainfully employed in a commercial, industrial or other enterprise there shall be insured under this Decree provided that they discharge their statutory obligations.

Article 8. The following shall not be subject to compulsory insurance:

1. Aliens who enjoy diplomatic privileges and immunities or special tax exemptions, and members of religious orders;
2. A husband working for his wife, a wife working for her husband and children under eighteen years of age working for their parents without receiving a fixed cash wage;
3. Persons required to belong to the civil or military pension scheme or to the internal pension scheme of a public agency;
4. Persons not gainfully employed.

(b) *Optional old-age insurance*

Article 9. (*a*) All persons referred to in the preceding article, with the exception of those mentioned in paragraph 1 thereof, may elect to be covered by the old-age insurance scheme established by this Decree.

(*b*) In order to be covered by the old-age insurance scheme, such insured persons shall apply in writing to the office of the Director-General of ONA and shall submit the necessary documents, specifying the category in which they wish to be included. Optionally insured persons shall be subject to the same obligations and entitled to the same benefits and privileges as compulsorily insured persons.

Chapter III

Organization and Operation

Article 10. The National Insurance Office shall be administered by a Board of Directors composed of seven members as follows:

(*a*) Three representatives of the State, belonging to the Department of Labour and Social Welfare, the Department of Finance and Economic Affairs and the Department of Trade and Industry respectively;

(*b*) One representative of the wage-earners;

(*c*) One representative of the employers;

(*d*) One representative of the Chamber of Commerce of Haiti;

(*e*) One representative of the Banque Commerciale d'Haiti.

Each member in turn shall preside over the Board according to a system of rotation. Terms of office and the agenda shall be fixed by decision of the Board.

Article 11. The representatives of the State shall be chosen directly by the President of the Republic from among the technical staff of the Departments concerned, on the recommendation of the Secretary of State for Labour and Social Welfare. The representatives of the employers and wage-earners shall also be appointed by the President of the Republic on the recommendation of the Secretary of State for Labour and Social Welfare, and shall be selected from two lists of three names presented by the wage-earners and the employers.

The members of the Board shall serve a term of three years which may be renewed.

The representatives of the Chamber of Commerce of Haiti and of the Banque Commerciale d'Haiti shall be appointed directly by these two institutions.

Articles 12 and 13 are concerned with the functions, powers and meetings of the Board of Directors.

Articles 14, 15 and 16 refer to the administrative divisions of ONA and the responsibilities of the Director-General.

Chapter IV

Operation of the Insurance Scheme

Article 17. The Haitian State recognizes, under guarantee of payment by the Banque Commerciale d'Haiti, entitlement to a pension in the case of all persons who are insured under this Decree and who satisfy the following conditions:

1. They must have reached the age of sixty years;
2. They must have paid, for at least twenty years, the contributions prescribed by this Decree;
3. They must be recognized unable to work and this must be attested by a medical certificate duly issued by the Social Insurance Institute of Haiti (IDASH).

An insured person shall be recognized unable to work if, taking into account his age (sixty years), state of health, physical and mental capacity and vocational skill and training, he is no longer capable of carrying on an occupation.

Article 18. A person who has reached the age of sixty years, who has paid contributions for not less than eighteen years and who is recognized unable to work may elect either to claim a refund of the contributions already paid or to complete the payments in a lump sum based on the highest wage earned.

Article 19. A person over sixty years of age who has paid contributions for a period of less than fifteen years and who is recognized unable to work shall be entitled to a refund of the contributions paid, plus interest at 6 per cent per annum.

Article 20. The pension shall be personal and non-transferable and shall not be subject to attachment or to termination. It shall be exempt from all taxes and duties and shall not be applied against any tax or duty owing. It may be applied only against amounts owed by the insured person to ONA.

Article 21. If a husband married under the system of community of property fails to contribute to his wife's maintenance, or if the spouses live apart, the wife shall be entitled to claim half the pension for herself unless a court rules otherwise.

Article 22. The pension, whether the insured person has already drawn payments or has merely qualified therefor, shall be revertible at half-rate in the following cases:

1. To legitimate or recognized minor children until their majority. However, if such children continue their education after reaching their majority, they may continue to draw the pension up to the age of twenty-five years;
2. To the widow of a pensioner, provided that she has not remarried;
3. To other dependants.

In the event of competing claims, the pension shall be distributed in accordance with the conditions laid down by the Civil Code for the settlement of community property and succession.

...

Article 24. Entitlement to a pension shall be extinguished by:

(*a*) The death of the beneficiary, in which case the provisions concerning revertibility shall apply where appropriate;

(*b*) The remarriage of the widow;

(*c*) The attainment of majority by the minor;

(*d*) The attainment of the age of twenty-five years by the student drawing the pension;

(*e*) The loss of Haitian nationality;

(*f*) A final judgement, having the force of *res judicata*, whereby the insured person is found guilty of a serious offence or of the offence of theft, breach of trust or fraudulent conversion committed in the performance of his duties;

(*g*) Failure to repay loans granted to the insured person after three (3) demands for payment have remained without effect;

(*h*) In the case of an optionally insured person, non-payment of contributions for a period of three months.

Article 25. A widow whose husband was a pensioner and who had been married for at least five years at the time of his death shall be entitled to a widow's pension by reversion....

Article 26. Children having lost by death one parent who was a pensioner shall be entitled to a single orphan's pension by reversion....

Article 27. Children having lost by death both parents, both of whom were pensioners, shall be entitled to a double orphan's pension by reversion....

Article 28. Entitlement to a pension shall be required *ipso jure* but the pension shall not be granted automatically. Any application for a pension shall be accompanied by the relevant supporting documents (birth certificate, work certificates, etc.) and shall be addressed to the office of the Director-General of ONA....

Article 29. The contributions of employers and wage-earners to the funds of ONA shall be calculated as follows:

(*a*) On wages not exceeding TWO HUNDRED GOURDES (G. 200.00), 2 per cent to be paid by the wage-earner and 1 per cent to be paid by the employer;

(*b*) On wages of G.201 to G.500, 3 per cent to be paid by the wage-earner and 1 per cent to be paid by the employer;

(*c*) On wages in excess of G.500, 4 per cent to be paid by the wage-earner and 1 per cent to be paid by the employer.

...

Chapter V

OTHER PRIVILEGES OF THE INSURED

Article 33. In addition to the pension and refunds accruing to the insured person under the conditions specified above, ONA shall accord him the following benefits and advantages:

(*a*) The insured person, his spouse and infant children may obtain treatment at the Medical Centre administered by ONA with a reduction of 50 per cent in hospital fees;

(*b*) The insured person shall participate *ipso jure* in the drawing of annual bonuses which shall be instituted by ONA;

(*c*) On the death of an insured person, ONA shall, at the request of his relatives, bear the funeral expenses and shall recover the same out of such benefits as may be owing to the insured person;

(*d*) A system of scholarships shall be instituted for the children of insured persons; these scholarships shall be awarded on the basis of merit and qualifications;

(*e*) ONA may grant to insured persons loans in an amount which shall in no case exceed one-third of their paid contributions, subject to repayment within a period in no case exceeding six months.

Chapter VI

FINANCIAL RESOURCES AND THEIR ADMINISTRATION

Article 34. The resources of the Office shall consist of:

(*a*) The contributions of the Haitian State and of the Banque Commerciale d'Haiti;

(*b*) The contributions provided for in article 3, paragraph (*b*), of this Decree;

(*c*) Donations, legacies, subsidies, etc.;

(*d*) The proceeds of fines imposed by the Office;

(*e*) The proceeds of the sale of stamps by the Office;

(*f*) The net profit accruing from the investments provided for in article 38.

Article 35. Contributions payable out of wages in respect of compulsory old-age insurance shall be withheld monthly by employers from the wages of insured persons. They shall be paid in, together with the employers' share, at the offices of the Banque Commerciale d'Haiti on the first working day of each month.

Article 36. The contributions of voluntarily insured persons shall be paid in directly by the persons concerned at the offices of the Banque Commerciale d'Haiti on the first working day of each month.

...

Article 38. The funds of the Office shall be used for the following purposes:

(*a*) The payment of pensions;

(*b*) General administrative expenses;

(*c*) Financing commercial or industrial enterprises or the purchase of shares therein;

(*d*) The construction of a low-cost housing project for the use of insured persons;

(*e*) Loans to insured persons.

Article 39. The funds of the Office shall be deposited with the Banque Commerciale d'Haiti, which shall be authorized to deduct 1 per cent of the amount of such funds as treasury commission. The Banque Commerciale d'Haiti shall also be authorized to recover the sums advanced to the Office to cover the initial cost of establishment, provided that the sums recovered do not exceed 10 per cent of the funds available, plus interest at 5 per cent per annum.

HONDURAS

CONSTITUTION OF THE REPUBLIC OF HONDURAS

Promulgated by Decree No. 20 of 3 June 1965 [1]

TITLE I

Sole Chapter

THE STATE AND ITS FORM OF GOVERNMENT

Article 1

Honduras is a sovereign and independent State, erected as a democratic Republic, to ensure the enjoyment of freedom, justice, social and economic well-being and the individual and collective advancement of its inhabitants.

Article 2

The people are the source of all sovereignty and from them all public powers, which shall be exercised by the State, are derived.

Article 3

State officials shall have no powers other than those expressly vested in them by law.

Any act which they perform outside the law shall be null and void and they shall incur liability therefor.

Article 4

The Government is republican, democratic and representative; it is conducted by complementary and independent powers: Legislative, Executive and Judicial, and is based on the principle of national integration.

Integration implies the participation of all political, economic and social sectors in public administration, a principle which the authorities must uphold in order to safeguard and strengthen Honduran nationality and to permit the progress of Honduras on the basis of political stability and national conciliation.

...

Article 10

Honduras adheres to the principles and practices of international law, designed to further human solidarity, respect of the sovereignty of peoples and the safeguarding of universal peace and democracy.

...

[1] *La Gaceta*, No. 18.588, of 12 June 1965.

TITLE II

Nationality and Citizenship

Chapter I

HONDURANS

Article 14

Honduran nationality is acquired by birth or naturalization.

Article 15

The following are Hondurans by birth:

1. Persons born in Honduran territory, with the exception of the children of diplomatic agents;

2. Children born abroad of a Honduran father or mother;

3. Persons born on board Honduran war vessels or aircraft and those born on board merchant vessels in Honduran territorial waters; and

4. Infants of unknown parents found in Honduran territory.

Article 16

Natives of the other States forming part of the Federal Republic of Central America shall be regarded as native-born Hondurans if after one year of residence in Honduras they indicate in writing before the competent authority their desire to be Hondurans and they satisfy the legal requirements, subject to reciprocity with their country of origin and to the extent of such reciprocity.

Article 17

The following shall be Hondurans by naturalization:

1. Persons of Spanish birth and natives of American countries who have resided in Honduras for one year.

2. Other aliens who have resided in Honduras for more than two consecutive years. In both cases the applicant must first renounce his nationality and indicate his desire to adopt Honduran nationality before the competent authority.

3. Aliens who have obtained a certificate of naturalization.

4. An alien married to a Honduran, who opts for Honduran nationality or who under the alien's national legislation acquires the nationality of the spouse.

5. Immigrants forming a part of selected groups brought into the country by the Government for agricultural or industrial purposes, who after residing in Honduras for one year meet the legal requirements.

Article 18

No native Honduran shall have any other nationality while he resides in the territory of the Republic.

Article 19

No naturalized Honduran may discharge official functions as a representative of Honduras in his country of origin.

Article 20

Neither marriage nor its dissolution shall affect the nationality of the spouses or of their children.

Article 21

Honduran nationality is lost:

1. By voluntary naturalization in a foreign country;

2. By cancellation of the naturalization certificate.

Article 22

Honduran nationality by birth shall be recovered when the person who has lost it is domiciled in the territory of the Republic and declares his intention to recover it, or when he remains in the country for a period of at least two years.

Article 23

Every Honduran is bound to defend his country, to respect the authorities and to contribute to the maintenance and the moral and material advancement of the nation.

Chapter II

ALIENS

Article 24

From the time they enter the territory of the Republic, aliens are bound to respect the authorities and obey the laws.

Article 25

Aliens in Honduras enjoy all the civil rights of Hondurans, subject to such restrictions as may be established by law for reasons of public order, security or national interest.

They are subject to all regular and extraordinary obligations of a general nature to which Hondurans are subject.

Article 26

Aliens may not file claims or demand indemnity of any kind from the State, save in the manner and in those cases in which Hondurans may do so.

Aliens may not have recourse to the diplomatic channel save in the case of denial of justice; for the purposes hereof the fact that a decision is adverse to the claimant shall not be deemed to constitute denial of justice. Persons who contravene this provision shall lose the right to reside in the country.

Article 27

Aliens may only hold positions, other than administrative positions, in the teaching of the sciences and the arts, or render technical or advisory services to the State, when there are no Hondurans to fill such positions or to render such services.

Article 28

Extradition may be granted only by virtue of a law or treaty, for ordinary crimes and in no case for a political offence, even if an ordinary offence is a result thereof.

Article 29

The laws shall establish the manner and the cases in which an alien may be denied entry into the national territory.

The Executive Power has the exclusive power to require any alien whose presence is deemed undesirable to leave the national territory, in conformity with the law.

Article 30

Aliens have the same individual and social rights and duties as Hondurans, subject to the exceptions and limitations established by this Constitution and the laws.

Article 31

Aliens may not engage in political activities of a national or international nature, under penalty of punishment prescribed by law.

Article 32

Aliens shall be subject to a special law.

Chapter III

CITIZENS

Article 33

All Honduran men and women over eighteen years of age are citizens.

Article 34

Citizens have the right:

1. To vote; and

2. To be elected to public office.

All Hondurans, without distinction as to sex, may hold public office, save in the case of the incompatibilities specified by law and the limitations established by this Constitution. Active members of the Army, the Security Forces or the Armed Forces may not vote but they may be elected to office in those cases not prohibited by law.

Article 35

The duties of a citizen, in addition to the other duties specified in this Constitution, are:

(*a*) To register in the electoral rolls;

(*b*) To vote in public elections;

(*c*) To discharge the functions of elective public office or of council member save in the case of excuse or refusal for good cause; and

(*d*) To perform military service and any other service required by the State. These obligations and infractions thereof shall be regulated by law.

Article 36

The status of citizen is suspended, lost and restored in accordance with the following provisions:

It is suspended

1. By a warrant of arrest or a formal charge;

2. By a judicial finding that there is sufficient evidence for trial;

3. By a final conviction of an offence;

4. By judicial deprivation of civil rights.

It is lost

1. By the acquisition of citizenship of another State, unless a treaty in force between that State and Honduras permits dual nationality;

2. By the rendering of services in time of war to an enemy of Honduras or its allies;

3. By entering the employment of a foreign nation of a military or political nature, in Honduras, without authorization of the National Congress;

4. By the rendering of assistance against the interest of the State to an alien or to a foreign government, in any diplomatic claim or before an international court;

5. By residing, if a naturalized Honduran, two years consecutively outside the territory of the Republic without prior authorization of the Secretariat of State for Foreign Affairs;

6. By revocation of the naturalization certificate;

7. By Government decision in the cases provided for under sub-paragraphs 3 and 5 hereof. The cases under sub-paragraphs 2, 4 and 6 hereof shall in no case be decided by the Executive Power, but by the National Congress, by means of a bill of particulars drawn up for the purpose.

It is restored

1. By confirmed dismissal of charges;

2. By final judgement of acquittal;

3. By the serving of the penalty, where reinstatement is not required;

4. By amnesty or pardon;

5. By reinstatement in the case of remission, by Government decision; and

6. By residence in the territory of the Republic for two consecutive years counted from the date of entry into the country.

Chapter IV

POLITICAL PARTIES

Article 37

Legally registered political parties are institutions under public law, whose existence and free functioning are guaranteed by this Constitution. However, political parties may not be organized on the basis of race, sex or class.

Article 38

Honduran citizens have the right to establish political parties in conformity with the requirements laid down in this Constitution and in the Electoral Law.

Article 39

The formation, registration and functioning of political parties which advocate or practise doctrines contrary to the democratic spirit of the Honduran people or which act in agreement with or under the control of an international or foreign organization whose ideological programmes are directed against the sovereignty of the State shall be prohibited. This prohibition does not apply to organizations which advocate Central American union or the Pan-American doctrines of continental solidarity.

Chapter V

SUFFRAGE AND THE ELECTORAL FUNCTION

Article 40

Suffrage is a right and a public duty. Its exercise shall be obligatory, within the limits and conditions established by law.

Article 41

The vote shall be direct and secret.

Article 42

Any act which prohibits or limits the participation of a citizen in the political life of the Nation shall be punishable.

Article 43

For all matters relating to electoral acts and procedures, there shall be a National Elections Council.

...

TITLE III

Declarations, Rights and Guarantees

Chapter I

DECLARATIONS

Article 51

The Constitution guarantees to Hondurans and to aliens resident in the country the right of inviolability in respect of their life and safety, liberty, equality before the law and the ownership of property.

Article 52

The declarations, rights and guarantees set out in this Constitution shall be without prejudice to other rights not specified, which are inherent in national sovereignty, the republican and democratic form of government and human dignity.

Article 53

Laws and provisions of the Government or of any other kind regulating the exercise of the rights and guarantees recognized in this Constitution shall be void if they diminish, restrict or circumvent those rights and guarantees.

Article 54

State officials are only the depositaries of authority; they are subject to, and in no case above, the law and are at all times answerable for their official conduct.

Public officials and employees shall remain civilly liable in respect of any infraction of the law committed in the discharge of their functions, throughout the period of limitation, which shall be ten years.

The period of limitation for criminal proceedings shall be laid down in the relevant code.

In both cases, the period of limitation shall begin to run from the time that the public official or employee ceases to perform the duties in the course of which he incurred liability.

Article 55

Action to prosecute violations of the rights and guarantees established in this Title is public, requiring no security or formality of any kind, and instituted by simple accusation.

Chapter II

INVIOLABILITY OF HUMAN LIFE

Article 56

The inviolability of life is guaranteed and the death penalty shall neither be imposed nor carried out under any law or by order of any authority.

Chapter III

SECURITY OF PERSON

Article 57

Personal freedom is inviolable and it may be temporarily restricted or suspended only in conformity with the law.

The right to defence is inviolable.

The inhabitants of the Republic shall have free access to the courts to carry out proceedings in the manner established by law.

Article 58

This Constitution recognizes the right of *amparo* (protection against arbitrary authority) and the right to require the production of a detained person, or of *habeas corpus*. Consequently, any wronged person, or any other person acting on his behalf, has the right:

1. To seek the remedy of *amparo* (protection against arbitrary authority):

(*a*) For maintenance or restoration of enjoyment of the rights and guarantees established in the Constitution; and

(*b*) For a declaration in a specified case that a law or decision or an act of authority is not binding on the petitioner because it contravenes or restricts a right guaranteed by the Constitution.

2. To file a petition for the production of a detained person, or *habeas corpus:*

(*a*) If he is illegally imprisoned, held or subjected to any restraint in the enjoyment of his personal freedom; and

(*b*) If while legally imprisoned or held he is subjected to torment, torture, unlawful requirements, harassment or any coercion, restriction or molestation not required for his security or the maintenance of order in the prison.

The filing of a petition for production of a detained person shall not be subject to formalities of any kind, and the authorities shall be required to act on it without delay. Courts may not disallow such a petition without being answerable therefor. The foregoing provision shall be limited in respect of the freedom of persons whose extradition has been requested in conformity with treaties or with international law.

The guarantee of *habeas corpus* shall be granted free of charge. Any authority who orders and agents who undertake the concealment of the detained person or who in any other way thwart this guarantee shall be guilty of the offence of illegal detention.

Article 59

No person may be tried other than by a competent judge or court, in accordance with the law

and with the formalities and guarantees established by law.

The court martial is recognized for crimes and offences of a military nature, but military courts may in no case extend their jurisdiction to persons not in active military service. If a civilian or a member of the armed forces not in active service is involved in a crime or offence of a military nature, the case shall be tried by the competent civil authority.

Article 60

Every accused person has the right not to be presumed guilty and shall be considered innocent until the contrary is proved.

Article 61

A warrant of arrest may not be issued without full evidence that a crime or ordinary offence punishable by deprivation of freedom has been committed and unless there is a reasonable indication of who its author was. Indictments (*declaratoria de reo*) shall be made in the same manner.

Article 62

No one may be taken into custody, detained or arrested otherwise than by virtue of a written order by the competent authority, made in conformity with the legal requirements and for grounds previously established in the law.

Article 63

No one may be detained for questioning for more than twenty-four hours without being arraigned before the competent authority for trial.

Detention for questioning may not exceed six days.

Article 64

No one may be committed to or held in gaol, even by order, if he supplies sufficient bail, when the penalty for the offence does not exceed three years' imprisonment.

Article 65

No one may be held or detained in places other than those determined by law. Gaols are establishments for the security and protection of society. In them, steps shall be taken for the prevention of crime, the re-education of the prisoner and his preparation for employment.

Corporal punishment and torture of any kind are absolutely prohibited. Accordingly, shackles, chains and unduly harsh treatment are prohibited. Contravention of these provisions shall be punishable by law.

Article 66

No one may be held incommunicado for more than twenty-four hours. Contravention of this principle shall be punishable by law.

Article 67

No one may be held, detained or arrested for debts or obligations not deriving from an offence.

Article 68

Imprisonment or detention as a measure of judicial compulsion shall be permitted in the cases and for the period determined by law. The term may not exceed thirty days.

Article 69

No one shall be compelled to incriminate himself by his own statement in criminal, correctional or police proceedings or to testify against his spouse or against relatives within the fourth degree of consanguinity or second degree of affinity. No violence or coercion of any kind may be used to compel any one to make a statement. Any statement obtained in contravention of this principle shall be void and those responsible for the contravention shall be subject to the penalties established by law.

Article 70

No one may be punished without first having been tried and convicted and without a sentence pronounced by a judge or a competent authority, with the exception of judicial compulsion in cases of contempt and other measures of a similar nature in civil or labour proceedings, and in cases of fine or detention in police proceedings.

Article 71

No one may be tried a second time for the same punishable acts as those for which he was tried previously.

Article 72

Any person may apprehend an offender caught *in flagrante*, for the sole purpose of handing him over to the competent authority.

Article 73

Penalties of a perpetual, degrading, proscriptive or confiscatory nature are prohibited.

The term of a penalty may not exceed twenty years, and the total for more than one offence may not exceed thirty years.

Article 74

No law shall have retroactive effect, save in criminal matters where the new law favours the offender or the accused.

Article 75

No Honduran may be expatriated.

Article 76

The Republic of Honduras extends and recognizes the right of asylum of persons prosecuted

on political grounds, provided that those granted asylum respect national sovereignty and the national laws.

The State may not authorize the extradition of persons charged with ordinary offences associated with political offences.

When an alien is expelled from the national territory by due process of law, if he is a political refugee he shall not be sent to the territory of a State seeking to apprehend him.

Article 77

The domicile or dwelling of every person is inviolable and may be searched only by authority, in the following cases:

1. For the removal of a criminal caught *in flagrante*;

2. Where an offence has been committed or a scandalous disturbance requiring immediate action has occurred in the dwelling, or where a complaint is made by a person in the house;

3. In an emergency such as fire, earthquake, flood, epidemic or similar danger;

4. For any check or inspection of a purely sanitary nature;

5. To free a person held against his will; and

6. For the purpose of removing articles sought in legal proceedings, where there is partial evidence that they are concealed in the house that is to be searched.

In the last-mentioned three cases a search may not be affected without the written order of a competent authority.

Provided that the domicile to be searched is not that of the person sought, the authority or its agents shall first request the permission of the person residing or dwelling in the house. A search may not be effected between seven o'clock in the evening and six o'clock in the morning without incurring liability.

Where this guarantee is suspended, the entry of a domicile must, as an indispensable requirement, be effected by the competent authority, with a written order or decision, an authentic copy of which the authority will present to the resident, his family or the nearest neighbour, according to the circumstances.

Article 78

All forms of correspondence and other private papers are inviolable and may only be seized or searched by order of the competent judicial authority and by due process of law; in all cases domestic and individual privacy in matters not related to the suit or trial in question shall be respected.

Books and documents of business and industrial establishments are subject, in conformity with the laws and regulations, to examination and auditing by the competent officials or authorities.

Correspondence, documents and books referred to in this article which are seized or removed from the postal services or from any other place may not serve as evidence.

Article 79

The Security Force is a State institution responsible for preserving public order, protecting persons and property and enforcing rulings, provisions, orders and decisions of the public authorities and officials. Its functions shall be regulated by a special law.

Article 80

It shall be the responsibility of the State to appoint attorneys to defend indigent persons and to protect the persons and interests of minors and other incompetent persons, and to give them legal assistance and represent them in proceedings in defence of their personal freedom and their labour rights.

Article 81

No one may be disturbed or prosecuted for his opinions. Private actions which do not disturb public order or which do not harm others shall be beyond the scope of the law.

Article 82

Usury is prohibited. A law fixing the maximum rate of interest on money is one of public order. The same law shall specify the penalties to be applied to offenders.

Chapter IV

FREEDOM

Article 83

All men are born free and endowed with equal rights.

Hondurans and aliens resident in the country have the right to recognition of their inherent dignity as human beings.

Article 84

All Hondurans have the right to do whatever does not harm others, and no one shall be obliged to do anything which is not required by law or prevented from doing anything not prohibited by law.

No one may take justice into his own hands or use violence in vindicating a right.

No personal service may be required and none is to be given without charge, save by virtue of a law or of a judgement based on law.

Article 85

The expression of opinions by any medium is free, and not subject to prior censorship. Any person abusing this right shall be legally responsible therefor.

Printing establishments, radio and television broadcasting stations and any other means of transmission or dissemination and their machinery and equipment may not be attached or confiscated and their operations may not be stopped or interrupted by reason of an offence or contravention relating to the expression of opinion. In such cases only the authors of the offence or contravention shall be liable.

No undertaking engaged in the dissemination of spoken or written thought may receive subsidies from foreign governments or political parties. The penalty for violation of this principle shall be established by law.

The direction of printed periodicals or analogous radio or television broadcasts and the intellectual, political and administrative control thereof shall be exclusively in the hands of Hondurans.

Article 86

The freedom of teaching is guaranteed.

Article 87

The free practise of all religions and religious denominations on a footing of absolute equality is guaranteed, provided that there is no contravention of the law and no disturbance of public order.

Ministers of the various religions may not hold public office or in any way engage in political propaganda invoking religious motives or using the religious beliefs of the people for political ends.

Article 88

Freedom of association is guaranteed, provided tnat it is not contrary to the security of the State or to decency.

Article 89

Every person has the right to meet with others, peacefully and without arms, in a public manifestation or in temporary assembly in connexion with their common interests of any kind, without notice or special authorization being required.

Article 90

Every person or association of persons has the right to present petitions to the authorities, whether for reasons of private or of general concern, and to obtain a prompt reply.

Article 91

A special authorization may be required for open-air meetings of a political nature for the sole purpose of ensuring public order.

Article 92

Freedom of industry, trade and lawful work is guaranteed.

Article 93

Every one has the right to move freely within the national territory and to leave it, enter it, and stay in it. No one may be compelled to change his domicile or residence except by order of a judicial authority, in special cases and by due process of law.

Article 94

No one may possess or bear arms without authorization of the competent authority. This provision shall be regulated by law.

Chapter V

EQUALITY

Article 95

There are no privileged classes in Honduras. All Hondurans are equal before the law.

Any discrimination by reason of sex, race, class or any other consideration contrary to human dignity is unlawful and punishable. The penalties for violation of this principle shall be established by law.

Article 96

Public levies and charges shall be payable only if lawfully decreed. Taxes and other public charges may only be imposed by a National Congress in ordinary session.

Chapter VI

PROPERTY

Article 97

The State guarantees, promotes and recognizes the existence and the legitimacy of private property in the broadest conception of social function and subject to no limitations other than those established by law for reasons of public necessity or interest.

Article 98

No one may be deprived of his property except by virtue of a law or a judgement based on law.

Article 99

The expropriation of property on grounds of public need or interest must be accomplished by means of a law or a judgement based on law, and shall not take place without prior compensation.

In the event of war or internal disorder, the compensation need not be paid in advance, but the corresponding payment shall be made not later than two years after the end of the state of emergency.

Article 100

The right to own property shall be without prejudice to the eminent right of the State. Likewise, it may not be placed above the rights of institutions engaged in works of a national character.

For the right of way in the construction of roads, railways, irrigation canals, electric and telegraphic transmission lines and other similar public works, the State shall compensate expropriated owners only to the extent of the improvements, save in special cases which shall be explicitly specified in the law. Likewise, the works required for the safety of the properties affected shall be carried out at the expense of the State.

Article 101

Land of the State, commons, community property or private property situated in zones adjacent to the boundaries with neighbouring States, those situated along the shores of the two oceans, to a distance of forty kilometers inland, and the lands in islands, cays, reefs, cliffs, rocks, shoals and sandbanks may be acquired in full or partial ownership only by native-born Hondurans, by companies composed entirely of Honduran members and by State banks, under penalty of nullification of the relevant instrument or contract.

Registrars of property are prohibited from recording documents which are in contravention of this provision.

Urban property is excepted.

Article 102

Every author, inventor, producer or merchant is entitled to exclusive ownership of his work, invention, trademark or commercial name, according to law.

Article 103

The right to reclaim confiscated property is imperscriptible.

Article 104

No one who has the free administration of his property may be deprived of the right to terminate his civil affairs by compromise or arbitration.

Article 105

The confiscation of property is prohibited. Property may not be limited in any way by reason of a political offence.

Article 106

Taxes shall in no case be confiscatory.

Chapter VII

SUSPENSION OF GUARANTEES

Article 107

The guarantees established in articles 58, No. 2; 62; 63; 64; 77; 78; 85; 88; 89; 93; and 98 may be suspended in the event of invasion of the national territory, a serious disturbance of the peace, epidemic or any other general disaster, by the President of the Republic, with the agreement of the Council of Ministers, by a decree which shall contain:

1. The grounds therefor;

2. The guarantee or guarantees which are restricted;

3. The territory affected by the restriction; and

4. The duration of the suspension. The same decree shall convene Congress in order that it may, within a period of thirty days, consider the decree and ratify it, amend it or reject it.

...

If convened, Congress shall consider the decree immediately. The restriction of guarantees may not exceed a period of forty-five days each time that it is decreed. If the reasons for the decree cease to exist before the period laid down for the restriction has expired, it shall cease to have effect, and in this case every citizen has the right to request a review of the suspension. On expiry of the period of forty-five days, the guarantees shall be automatically reinstated, unless a new decree of restriction has been made.

The restriction of guarantees by decree shall in no way affect the functioning of the organs of the State, whose members shall at all times enjoy the immunities and prerogatives to which they are entitled by law.

Article 108

The territory in which the guarantees set out in the foregoing article are suspended shall be governed, during the suspension, by the Law of the State of Siege; but neither this law nor any other may provide for the suspension of any guarantees other than those referred to above.

Likewise, during the suspension no new offences may be instituted nor may any penalties be imposed other than those established by the laws in force when the suspension was decreed.

In the event of the violation by the Executive Power of any of the provisions contained in this Title III other than those contained in the foregoing article, the injured person or any person acting on his behalf may seek the remedy of *amparo* (protection of civil rights).

TITLE IV

Social Guarantees

Chapter I

THE FAMILY

Article 109

The family, marriage and motherhood are under the protection of the State. The juridical equality of spouses is guaranteed.

Article 110

Only a marriage solemnized by a competent official and duly recorded in the civil registry is valid. Regulations governing the celebration of marriage shall be established by law.

Article 111

De facto unions between persons having legal capacity to marry are recognized. The conditions under which such a union shall have the effects of a civil marriage shall be established by law.

Article 112

Classifications in respect of the nature of filiation are abolished. No statement of any kind as to differences in respect of the birth or the marital status of the parents shall be entered in birth registrations or in any document, affidavit or certificate concerning filiation. Consequently, no inequality among children is recognized, all having the same rights and duties.

Article 113

Religious instruments or documents shall serve only to establish the marital status of persons, as duly authenticated supplementary evidence.

Article 114

The right of adoption is recognized. This institution shall be regulated by a special law.

Article 115

Investigation of paternity is authorized. The procedure shall be determined by law.

Article 116

Parents of poor families with five or more minor children shall be given special State protection. Where they are of equal aptitude, they shall be given preference for appointment to public positions.

Article 117

Parents are under an obligation to feed, assist and educate their children. The State shall ensure compliance with these duties.

Article 118

It is the responsibility of the State to look after the physical, mental and moral health of children, by establishing adequate institutions and agencies as required.

Laws for the protection of children are laws of public order, and the official establishments set up for this purpose have the status of social welfare centres.

It is an obligation of the State to encourage the organization of sponsoring groups and executive and administrative boards for welfare centres, charitable agencies and entities designed to promote community progress and improvement, set up by private initiative. This provision shall be regulated by law.

Article 119

Mentally or physically defective minors, orphans, abandoned persons, the aged, and delinquent and pre-delinquent young persons shall be subject to special legislation for their supervision, rehabilitation and protection. The admission of a minor under eighteen years of age to a gaol or prison shall not be permitted.

Article 120

The State shall ensure the care and the education of minors whose parents or guardians are economically unable to do so or who have no relatives who are required to do so.

Article 121

The family patrimony shall be the subject of special legislation for its protection and encouragement.

Article 122

Divorce is recognized as a means of dissolving the marriage bond.

Chapter II

LABOUR AND SOCIAL WELFARE

Article 123

Every person has the right to work and freely to choose and to leave his occupation, to equitable and satisfactory working conditions, and to protection against unemployment.

Article 124

Laws governing the relations between employers and workers are of public order. Any provisions or agreements which contravene or restrict the following guarantees shall be null and void:

1. The regular day-time period of work may not exceed eight hours per day or forty-four hours per week. The regular night-time period of work may not exceed six hours per day or thirty-six hours per week. The regular period of combined day-time and night-time work may not exceed seven hours per day or forty-two hours per week. In each case the pay shall be equivalent to the wages for forty-eight hours of work. Overtime work shall be remunerated in the manner specified by law. These provisions shall not apply in the clearly defined cases of exception established by law.

2. Workers shall not be required to perform more than twelve hours of work in each period of twenty-four successive hours, save in the cases established by law.

3. Equal wages shall be paid for equal work, without discrimination of any kind, provided that the position, the working hours, efficiency and length of service are also equal.

4. Wages must be paid in legal tender.

5. The amount of wages, indemnity compensation and social benefits is a privileged credit in the event of bankruptcy or insolvency of the employer.

6. Every worker is entitled to a minimum wage fixed periodically with the participation of the State, workers and employers, which is sufficient to meet the normal material, moral and cultural needs of his household, in accordance with the standards of each kind of work, the particular conditions of each region and type of work, the cost of living, the relative skills of the workers and the payment systems of enterprises.

Likewise, a minimum wage shall be established for those activities which are not regulated by a collective contract or agreement.

The minimum wage shall be exempt from attachment, compensation or discount save as provided by laws governing family and trade union obligations of workers.

7. In the equipment of his establishments, an employer must observe the legal provisions concerning health and hygiene, adopt adequate safety measures for the use of machinery, instruments and working materials, and organize operations in such a way as to provide the maximum guarantee for the health and safety of the employees compatible with the nature of the undertaking, subject to such penalties as may be established by law.

Agricultural employers shall be subject to the same system of safeguards in respect of the use of toxic substances for the treatment of plants, in order to protect their employees against occupational illnesses.

Special protection shall be given to women and to minors under sixteen years of age.

8. Minors under fourteen years of age and those above that age who are still subject to schooling by virtue of national legislation, may not be employed in any kind of work. The authorities responsible for supervising the labour of such minors may authorize their employment, when this is deemed indispensable for their maintenance or for the support of their parents or brothers and sisters and provided that their labour does not prevent compliance with the minimum requirement of compulsory education.

For minors under sixteen years of age the period of work, which must be day-time work, may not exceed six hours per day or thirty-six hours per week in any kind of work.

9. A worker is entitled to annual paid vacations, the duration and time of which shall be regulated by law. In the event of unwarranted dismissal, the employer shall pay in cash for that part of the vacation period corresponding to the period worked, in addition to other compensation prescribed by law.

10. Workers are entitled to leave with pay for holidays specified by the law; the law shall also specify what kinds of work shall not be governed by this provision, but in such cases workers shall be entitled to overtime pay.

11. A woman is entitled to leave before and after child-birth, without loss of employment or wages. During the nursing period she is entitled to extra rest periods each day for nursing her children.

A pregnant woman may not be dismissed from employment except for good cause explicitly indicated by law.

12. Employers are required to indemnify their workers for accidents at work and occupational diseases, in conformity with the law.

13. The right to strike or to effect a lockout is recognized. The law shall regulate the exercise of the right and may subject it to special restrictions in specified public services.

14. Workers and employers have the right to associate freely for purposes exclusively related to their economic and social activities, by forming trade unions or associations. This right shall be regulated by law.

15. The State shall protect individual and collective contracts between employers and workers.

...

Article 144

The rights affirmed in this chapter cannot be renounced. Any stipulations which restrict or suppress them shall be null and void.

Article 145

The rights affirmed in this chapter cannot be chapter do not exclude those emanating from the principles of social justice accepted by our country in international conventions.

Article 146

Labour legislation regulating the relations between capital and labour shall do so on a basis of social justice in such a way that workers are guaranteed conditions necessary for a normal life and capital a fair return on investment.

Chapter III

CULTURE

Article 147

Education is a special function of the State for the preservation, development and dissemination of culture, the benefits of which must be extended to society without discrimination of any kind.

...

Article 164

The arts and handicrafts of the people are elements of national culture and shall enjoy special protection in order to preserve their

artistic authenticity and improve their production and distribution.

TITLE V

Powers of the State

THE LEGISLATIVE POWER

Chapter I

ITS ORGANIZATION

Article 165

The Legislative Power is exercised by a Congress of Deputies, who shall be elected by direct suffrage. The National Congress shall meet in the capital of the Republic in regular session, without the necessity of convocation, on the twenty-sixth day of May each year, on which date it shall be formally inaugurated, and its session shall close on the twenty-sixth day of October in the same year.

A session may be extended for such time as may be necessary, by a resolution of Congress on the motion of a deputy or of the Executive Power.

...

Article 172

Deputies shall be elected for a term of six years, counted from the date on which the National Congress is formally inaugurated. In the event of the definitive absence of a deputy the alternate called by Congress shall complete his term.

Article 173

It shall be the obligation of deputies to meet in assembly on the dates fixed in this Constitution and to attend all meetings of Congress except in the case of duly proven incapacity.

Article 174

Deputies holding office or in receipt of credentials issued by the National Elections Council who fail to attend meetings without good reason shall cease to exercise their functions and shall forfeit the right to hold public office for ten years. This principle shall be regulated by the rules of procedure.

Article 175

Deputies may not abstain from voting or cast blank ballots.

Article 176

The following may not be elected deputy:

1. The President of the Republic and Presidential Designates;

2. The Secretaries and Under-Secretaries of State;

3. Members of the military in active service and members of the security forces or of any other armed force and other public officials and employees;

4. Members of the electoral bodies;

5. Members of the National Economic Council;

6. Diplomatic and consular agents;

7. The Presidents, members of the board of directors and managers of the State Banks and of autonomous governmental institutions;

8. The spouse and relatives within the fourth degree of consanguinity or second degree of affinity of the President of the Republic, the Secretaries and Under-Secretaries of State, the Commander-in-Chief of the armed forces, judges of the Supreme Court of Justice and members of the National Elections Council;

9. The spouse and relatives of the heads of military zones, commanders of military units, departmental or sectional military delegates, and delegates of the security forces within the second degree of consanguinity of affinity, if they are candidates for the department in which they hold authority;

10. Persons holding State concessions for the exploitation of natural resources or contractors of public services and works financed out of national funds who have pending accounts with the State in connexion with those activities; and

11. Other persons who are delinquent debtors of the Public Treasury as a result of the administration of national funds.

Article 177

From the date of their election deputies shall enjoy the following prerogatives:

1. Personal immunity from detention, accusation or trial, even during a state of siege, unless the National Congress first declares that there are grounds for legal proceedings;

2. Exemption from military service without their consent;

3. Freedom from liability in respect of their parliamentary opinions or initiatives at all times; and

4. Exemption from civil suit from a date fifteen days before until fifteen days after a regular or extraordinary session of the National Congress, except in respect of counter-claims.

...

Article 179

Deputies in office may not hold paid public offices during the term for which they have been elected, except in education or professional services relating to social welfare. They may, however, serve voluntarily as Secretary or Under-Secretary of State or as diplomatic representative. In such cases they will be reinstated in the National Congress when these functions terminate.

Alternate deputies may hold public positions or employment, without losing their status as alternates as a result of their acceptance and exercise thereof.

Article 180

No deputy may hold property of the State on lease, directly or indirectly, or obtain contracts or concessions of any kind from the State.

...

Chapter V

THE EXECUTIVE POWER

Organization

Article 190

The Executive Power shall be exercised by a citizen who is named President of the Republic, and in his absence by one of the three Designates.

Article 191

The President of the Republic and the three Presidential Designates shall be elected jointly and directly by the people, by a simple majority of votes. The election shall be declared by the National Elections Council or, if it does not do so, by the National Congress.

Article 192

The presidential term shall be six years and shall begin on the sixth day of June.

Article 193

A citizen who has held the office of President under any title for a constitutional term or more than half thereof may not again be President of the Republic or discharge the functions of that office under any title.

Article 194

Any official who violates the preceding article or who advocates amending it, and those who directly support him, shall thereby cease to hold their respective offices and shall be disqualified from the exercise of any public function for a period of ten years from the date of the violation or the attempt to bring about amendment of the article.

Article 195

To be President of the Republic or Presidential Designate, it is required:

1. To be a Honduran by birth;
2. To be over thirty years of age;
3. To enjoy the rights of citizenship;
4. To be a layman.

Article 196

In addition to what is provided in article 193, the following may not be elected President of the Republic for the succeeding term:

1. A citizen who has held the Presidency under any title within the twelve months preceding the elections.

2. The President of the National Congress, the Secretaries and Under-Secretaries of State, the Commander-in-Chief of the Armed Forces, members of the National Elections Council and officials elected by the National Congress who are exercising their functions or have done so within the twelve months preceding the elections.

3. The spouse and parents within the fourth degree of consanguinity or second degree of affinity of the President of the Republic, the Commander-in-Chief of the Armed Forces, members of the National Elections Council or any citizen who has held the Presidency within the twelve months preceding the elections.

...

Title XIII

Sole Chapter

Amendment

Article 342

Amendments to this Constitution may be decreed by the National Congress in regular session, by a two-thirds vote of all its members. The decree shall indicate the article or articles to be amended and must be ratified by the following regular legislature, by the same number of votes, in order to take effect.

In no case may articles 4, 192, 193, 196 or this article be amended by the foregoing procedure.

...

HUNGARY

REGULATIONS IN 1964 AND 1965 RELATING TO HUMAN RIGHTS [1]

Legislative Decree No. 6 of 1964 on unification of the social insurance scheme

In view of the results achieved in the building of socialism and in the unfolding of socialist democracy, as well as of the successful work of the Trade Unions in the field of social security, it seems reasonable to assign further social security functions to the Trade Unions. This ensures at the same time uniform guidance, supervision and management and promotes further development in matters of social insurance. That is why the legislative decree provides that the Central Council of Trade Unions shall handle all relevant matters and have all the necessary funds at its disposal.

Within this scope the Central Council of Trade Unions shall have the duty to deal with the improvement of social security, to prepare the drafts of legislative acts, legislative decrees, governmental decrees and decisions related with matters of social insurance, as well as the relevant budget estimates, and to submit them to the Council of Ministers.

Act II of 1964 on post and communications

To meet the postal and communications requirements, the Act regulates the rights and duties of the public making use of the postal and communication services of the Hungarian Post. The most important provisions of the Act are given below:

Section 4. (2) The Hungarian Post in bound to ensure everyone the use of its services with the existing organisation and facilities, and to provide those services on the conditions laid down in the regulations.

Section 8. The Hungarian Post is bound to ensure the privacy of correspondence guaranteed in the Constitution and, as far as possible in the communication system concerned, the secrecy of communications.

Section 9. (1) Except in the cases defined in paragraph (2), it is forbidden to open sealed mail without the consent of the mailer or the addressee.

(2) The Hungarian Post may open sealed mail without the consent of the mailer or the addressee if:

(*a*) The mail is undeliverable and its opening becomes necessary in order to establish the identity of the addressee or the mailer;

(*b*) The mail is damaged and its opening becomes necessary in order to establish or preserve its content;

(*c*) The mail is suspected for good reason of containing something that is excluded from postal carriage or in respect of which the postal regulations might have been violated.

(3) The opening of sealed mail shall be performed by a commission.

Order-in-Council No. 24/1964 (X.30) on the prevention and combating of contagious diseases

The Hungarian Government issued this regulation with a view to consolidating the results attained in this field. The main provisions are quoted below:

Art. 3. (1) Any person who, in view of his/her age, occupation, habitation, living conditions or for any other reason, is exposed to contagion must be vaccinated against contagious diseases preventable by vaccination.

(2) Persons under obligation to be vaccinated are bound to submit to vaccination. The vaccination of a minor has to be made possible by his/her legal representative (parent or guardian).

(3) Vaccination and the treatment of any ensuing complication are free of charge.

Art. 4. (1) In case of a contagious disease or of its suspicion the person concerned is bound, on invitation from the health services, to submit to medical examination.

(2) The infected person must be isolated for the duration of virulence; in the cases defined by the Minister of Health, isolation must take place in an infirmary of inpatients.

Legislative Decree No. 11 of 1964 promulgates the international Convention against discrimination in education, adopted at Paris on December 14, 1960.

[1] Note furnished by the Government of Hungary.

Legislative Decree No. 24 of 1965 on establishments of secondary education

It is laid down in this regulation that the opening and maintenance of grammar schools and specialised secondary schools operating as establishments of secondary education is a duty incumbent on the State. However, the Churches also may maintain grammar schools by virtue of agreements concluded with the State. The following provisions should also be noted:

Art. 5. (1) Grammar schools and specialised secondary scholls shall provide four-year courses.

(2) The language of teaching in grammar schools and specialised secondary schools is Hungarian. In certain schools teaching may take place also in another language besides the compulsory teaching of Hungarian.

(3) Education in grammar schools and specialised secondary schools is provided jointly to students of both sexes. In well-founded cases separate forms may be set up for the two sexes.

Art. 6 (1) The work of teaching and education in grammar schools and specialised secondary schools must be assisted by providing facilities like college (students' hostel), study room and canteen.

Art. 9. Grammar school courses may be completed through private study by persons past schooling age and by children of school age exempted from attending school. Persons pursuing private studies may enter for end-of-year examinations at public grammar schools only.

Art. 10. (1) It is permitted to change from grammar school to specialised secondary school, and from specialised secondary school to grammar school or to another specialised secondary school providing different vocational training.

Art. 19. (1) Night and correspondence courses in grammar school subjects for workers graduated from general school are given at special sections of educational establishments or at schools organised for this purpose, mainly in factories and enterprises.

(2) The workers' grammar schools may enrol persons who are past schooling age and are employed as well as school-age persons in employment who have completed eight grades of general school with good results.

(3) On the conditions stipulated by law the workers' grammar schools may enrol also persons past schooling age and graduated from secondary school who are not in employment.

Order-in-Council No. 7/1965 (VI.13) provides for a rise in pensions of the lower categories paid on the basis of previous superannuation acts as well as in orphan's allowances.

Order-in-Council No. 8/1965 (VI.13) provides for a rise in family allowances.

Decree No. 7/1965 (X.8) of the Minister of Agriculture provides for the protection of co-operative farmers partially incapacitated by industrial accident or occupational disease or owing to tuberculosis in specified spheres of work.

Order-in-Council No. 12/1965 (VII.11) on the employment of persons released from prison

The purpose of this regulation is to enable the persons having served their terms to adapt themselves to the work of society and to avoid being discriminated against in employment. With this end in view, the prison manager, still before releasing the convict, gives him a hearing and asks him where he wishes to go to work. On this ground the manager shall inform the competent local council where the person concerned shall report after his release.

By virtue of Art. 5 of this regulation the local council applied to shall make sure that the ex-convict gets a regular job.

Art. 6, on the other hand, provides that State enterprises (institutions) and co-operative societies have to assist the persons released from prison in getting a position. Such persons must not be denied employment for their having been sentenced to prison, except when the holding of the position in question is subject to a clean record.

IRAN

NOTE [1]

During 1965, the following laws and regulations relating to human rights were promulgated:

1. Act establishing houses of equity;
2. Regulations concerning the election of members of houses of equity councils;
3. Regulations regarding the commitment of minor offences by inhabitants of rural areas;
4. Regulations regarding the institution and setting up of houses of equity;
5. Act to increase the penalty for aiding unauthorized persons to cross the frontier;
6. Regulations governing the implementation of article 17 of the Land Reform Act;
7. Act adding six addenda to article 10 of the Labour Act;
8. Regulations concerning press reporters and press photographers in Iran;
9. Regulations governing the application of article 1 of the Development Corps Act; and
10. Act abolishing the penalty of flogging.

[1] Note and texts furnished by Professor A. Matine-Daftary, Member of the Senate of Iran, President of the Iranian Association for the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

REGULATIONS GOVERNING THE APPLICATION OF ARTICLE 1 OF THE DEVELOPMENT CORPS ACT

Approved by the Council of Ministers on 23 Bahman 1344 (12 February 1965)

SECTION I

FUNCTIONS OF THE GROUP OF DEVELOPMENT CORPS OFFICERS WHO WILL BE ENGAGED IN PROMOTING AGRICULTURAL TECHNIQUES UNDER THE AUTHORITY OF THE MINISTRY OF AGRICULTURE

Art. 1. The Development Corps officers who are sent to promote agriculture and serve in rural areas shall be divided into two groups, according to their level of education and the type of functions assigned to them:

(*a*) Development workers holding the full middle school diploma or its equivalent;

(*b*) Technical supervisors holding at least the licentiate or its equivalent.

Art. 2. The functions of the development workers shall be as follows:

(*a*) To implement agricultural expansion and development programmes in the villages so as to achieve the goals set forth in article 1 of the Act establishing the Development Corps;

(*b*) To prepare an inventory of the villages in the development areas in accordance with the questionnaires to be supplied to Development Corps officers by the Development Organization of the Ministry of Agriculture, in order to obtain a full knowledge of the situation and conditions in each village and gather the necessary information on the problems and difficulties existing in the villages with a view to the preparation of plans and annual programmes;

(*c*) To prepare and execute the annual agricultural expansion programmes for each of the villages in the development area in accordance with the forms to be supplied to Development Corps officers by the Development Organization of the Ministry of Agriculture for the purpose of determining the steps to be taken for the application of article 1 of the Act. These programmes will consist primarily of measures to control serious plant pests, the inoculation of livestock against animal diseases, the diagnosis and treatment of some of the serious prevalent animal diseases with the guidance of veterinary surgeons, the establishment of model plots, the use of chemical fertilizers and selected seed and, finally, the artificial insemination of livestock.

In addition, to take the necessary measures to acquaint farmers with sound methods of agriculture and animal husbandry, through the dissemination of development publications, the showing of films, and so forth; and to endeavour to expand and improve the local rural industries, in co-operation with the Centre for Small Industries and Handicrafts of the Ministry of Economy.

Art. 3. The development supervisors in the development areas shall be divided into small groups, each consisting of experts in the various branches of agriculture responsible for supervising the execution of the programmes assigned to a number of Development Corps officers holding the Development Diploma, the size of each group depending on the size of the villages and the distances between the farms and the villages. Their functions shall be as follows:

(*a*) To inspect the questionnaires on the villages prepared by the development workers in the supervision area and, where necessary, to help in the preparation and correction of the questionnaires and confirm them.

(*b*) To supervise and check the annual programmes of the Development Corps officers in the villages in the supervision area and, where necessary, to help in the preparation and rectification of the programmes and confirm them.

(*c*) To supervise the preparation of the monthly work programme for each Corps member and provide for measures relating to seasonal requirements and their co-ordination with the needs of the inhabitants of the villages in the supervision area during the month in question.

(*d*) It shall also be the duty of the supervisors to assist the agricultural development workers in technical matters, and the development workers shall, in turn, consult the supervisory groups on the technical problems of their areas.

(*e*) In the matter of pest control, supervisors shall deal as a matter of priority with the major pests of the region.

Art. 4. In each province one or more officials of the Country Development Offices shall be chosen as advisers representing the Development Organization to work in co-operation with the Development Corps supervisory groups and development workers and guide them in the execution of the programmes, under the supervision of the head of the Provincial Development Office.

Art. 5. Agricultural Development directors in the counties shall report regularly, through the head of the Provincial Development Office, to the Agricultural Development Organization in the capital on the execution of the programmes and the progress of the work of the individual Development Corps officers. The Agricultural Development Organization shall discuss questions relating to rural industries with the Centre for Small Industries and Handicrafts of the Ministry of Economy.

Art. 6. The Development Corps officers shall route their correspondence through the Development Corps supervisory group attached to the Development Organization of the Ministry of Agriculture in the capital.

Art. 7. Members of the Development Corps supervisory groups shall apply to the Provincial Development Offices for the elimination of technical work defects. The Provincial Development Offices shall take prompt steps to comply with the Development Corps officers' requests, in accordance with the relevant rules and regulations, and shall notify them of the results.

Art. 8. If the Development Organization of the Ministry of Agriculture finds that any of the Development Corps officers are unable to perform their assigned functions, they shall be placed under the supervision of an Agricultural Development worker with previous service experience in the development area, in order to prevent any waste of time or money.

Art. 9. For the purpose of centralizing matters relating to the training of farmers, all the functions laid down in these Regulations shall be exclusively a part of the functions of the officials of the Development Organization of the Ministry of Agriculture and the members of the Development Corps.

Section II

FUNCTIONS OF THE GROUP OF DEVELOPMENT CORPS OFFICERS WHO, UNDER NOTE 2 TO ARTICLE 2 OF THE ACT ESTABLISHING THE DEVELOPMENT CORPS, WILL BE PLACED UNDER THE AUTHORITY OF THE MINISTRY OF DEVELOPMENT AND HOUSING

Art. 10. The functions of the Development Corps officers placed under the authority of the Ministry of Development and Housing shall be as follows:

(*a*) To execute the rural development programmes on the district level and below drawn up by the Ministry of Development and Housing. These programmes will comprise village construction, public buildings, secondary roads, protective structures and rural electrification.

(*b*) To guide and assist villagers in matters relating to development, on the principle of self-help and the utilization of the human and, on occasion, the financial resources available in the villages with a view to the execution of the development programmes mentioned in paragraph (*a*) of this article, in particular those relating to rural housing, in co-operation with the agricultural development supervisors of the Development Corps.

(*c*) To study local building materials and endeavour to find better and cheaper materials; to encourage and help in the construction of kilns for the manufacture of brick, plaster and other building materials.

(*d*) To draw up particulars of the villages in the different operating areas of the Development Corps, with a view to investigating the possibilities for executing the rural reconstruction and

development schemes mentioned in paragraph (*a*) of this article, on the basis of questionnaires to be prepared and supplied to the members of the Corps by the Ministry of Development and Housing.

Art. 11. The head of the Technical Office in each province or governor-generalcy, in co-operation with an engineer appointed from the capital, shall establish the work programme of each Development Corps officer before he commences work and shall send the programmes of the Development Corps officers in the province or governor-generalcy, after their confirmation by the Co-ordination Committee, to the Ministry of Development and Housing for inspection.

One copy of all development programmes transmitted to Development Corps officers shall be sent by the Ministry of Development and Housing to the Development Corps Co-ordination Committee.

Art. 12. Every Development Corps officer shall notify the Technical Office in writing of difficulties or deficiences encountered in his work, and if his communication does not receive attention within five days he shall report the matter to the Ministry of Development and Housing.

Art. 13. One month before the termination of his service, every Development Corps officer shall prepare a report on the work he has carried out, together with his proposals and recommendations, on the appropriate form and send it to the Ministry of Development and Housing.

SECTION III

FUNCTIONS OF THE GROUP OF DEVELOPMENT CORPS OFFICERS WHO WILL BE PLACED UNDER THE AUTHORITY OF THE MINISTRY OF ECONOMY

Art. 14. The functions of the Development Corpsmen placed under the authority of the Ministry of Economy shall be as follows:

(*a*) To compile statistics on rural industries and handicrafts, mobilize the seasonally unemployed labour force in the villages, expand local industries and establish new handicrafts.

(*b*) To teach sound production methods for small industries and handicrafts at the village level and endeavour to increase local industries, introduce better technical facilities and develop the skill of producers.

(*c*) To supervise the execution of the projects to be put into effect for the expansion and improvement of handicrafts and the standardization of the various products and manufactures at the village level and investigate production methods and the balance of power and raw materials resources.

(*d*) To afford scientific and technical assistance in the establishment of facilities for the classification and packaging of products at rural centres and to guide and initiate producers in the execution of product standardization programmes in workshops at the village level.

(*e*) To carry out inspections to ensure that the specifications of export goods conform to the established standards in villages in the frontier regions.

(*f*) To implement the provisions of the Weights and Measures Act, approved on 18 Dimah 1315 (8 January 1936), at the district level and below.

Art. 15. The Ministry of Economy may make available to the Industrial Standards and Research Institute of Iran, at its request, for the execution of the tasks assigned to it, a number of the electrical, mechanical, chemical, mining and construction engineers assigned to the Ministry under Note 2 to article 2 of the Development Corps Act and a number of the agricultural engineers and veterinary surgeons who are surplus to the requirements of the Ministry of Agriculture and are recommended by the latter to the Ministry of Economy.

SECTION IV

GENERAL PROVISIONS

Art. 16. With respect to the application of article 1 of the Act establishing the Development Corps, in order to ensure the sound and proper implementation of all development plans at the district level and below, the Ministry of Development and Housing and the Ministry of Economy shall submit the programmes which they are executing in the villages through the services of the Development Corps officers to the Development Organization of the Ministry of Agriculture for inspection.

Art. 17. The annual programmes of the individual Development Corps officers drawn up by the Ministry of Development and Housing and the Ministry of Economy shall be examined and approved by a Permanent Co-ordination Committee, consisting of representatives of the Ministries of Agriculture, Development and Housing and Economy, to be established within the Development Organization of the Ministry of Agriculture.

NOTE 1. The dates for the meetings of this Committee shall be announced by the Director General of the Development Organization of the Ministry of Agriculture, but the Committee shall meet not less than once a month.

Art. 18. A committee to be known as the Development Corps Programme Co-ordination Committee shall be established at each Provincial Development Office to consider, approve and co-ordinate the agricultural development programmes in the villages of each province, governor-generalcy and independent district. It shall have the following membership: the head of the Agricultural Development Office, the head of the Technical Office, the head of the Economic Office, the head of the Standards Office, and the engineer appointed by the Ministry of Development and Housing to the Provincial Development Office. The head of the Agricultural Develop-

ment Office shall act as Secretary of the Committee and shall convene the Committee as necessary. Should one or more members be unable to attend a meeting of the Committee, the head of the Development Office, the head of the Technical Office, representing the Ministry of Development and Housing, and the head of the Economic Office shall constitute a quorum.

REGULATIONS CONCERNING PRESS REPORTERS AND PRESS PHOTOGRAPHERS IN IRAN

Approved by the Council of Ministers on 15 Esfand 1343 (6 March 1965)

SECTION I

Art. 1. A press reporter is a press representative of a newspaper or magazine who is recognized as such by a licence issued by the Ministry of Information.

Art. 2. Press reporters are divided into the following three groups:

(*a*) Political reporters;

(*b*) Reporters on social affairs;

(*c*) Press photographers, who are concerned exclusively with photography.

SECTION II

CONDITIONS FOR THE SELECTION OF PRESS REPORTERS

Art. 3. A press reporter's licence shall be valid for a period of three full years from the date of issue, and an application for its renewal shall be made annually thereafter. The Ministry of Information, having due regard to note 1 to article 4 of these regulations, shall renew the licence.

Licences for press reporters and press photographers in the counties shall be issued, provided that the applicants possess the qualifications specified in these regulations, through the Information and Radio Office of the province concerned.

Art. 4. Reporters shall possess the following qualifications:

(*a*) Be of Iranian nationality;

(*b*) Be at least twenty years of age in the case of social affairs reporters and press photographers and thirty years of age in the case of political reporters;

(*c*) In the case of social affairs reporters and of photographers, have at least three years previous press experience or hold, in the counties, the certificate for the first three years of middle school and, in Teheran, the middle school diploma; in the case of political reporters, have had training at a level above the full middle school certificate or hold the certificate for the completion of the special course in journalism of Teheran University;

(*d*) Know one living foreign language, in the case of political reporters;

(*e*) Be of good repute and moral competence;

(*f*) Have no record of a criminal conviction entailing the loss of civil rights;

(*g*) Present a written letter of introduction from the newspaper or magazine concerned;

(*h*) Not be in the official or unofficial employ of government ministries or departments or of companies or organizations connected with the Government or in receipt of any kind of salary, wage or remuneration from such institutions.

NOTE 1. If a reporter ceases to qualify under paragraph (*a*), (*e*), (*f*) or (*h*) of this article, his press card shall be cancelled by the Ministry of Information or the Information and Radio Office of the province concerned.

NOTE 2. For the purpose of establishing the moral competence referred to in paragraph (*e*), the Ministry of Information shall consult the relevant authorities and, with the aid of any other information it may acquire on its own initiative, proceed to ascertain the reporter's moral competence.

NOTE 3. A reporter may work for several newspapers or magazines, but in each instance he must be recommended to the Ministry of Information by each newspaper or magazine separately.

Art. 5. If a reporter's employment with a newspaper, magazine or related establishment is terminated, the proprietor or editor of the newspaper, magazine or establishment shall immediately report the circumstances to the Ministry of Information, in the capital, or to the Information and Radio Office, in the provinces, for cancellation of his press licence.

Art. 6. The revocation of the concession or the suspension of a newspaper or magazine under the Press Law shall entail the cancellation of the licences issued to the reporters of the newspaper or magazine concerned.

Art. 7. Reporters who are recommended to the Ministry of Information or to the provincial Information and Radio Offices shall complete the printed questionnaire in conformity with the attached model and send it, together with four photographs, three certified copies of their identity card and a certificate of a clean record, to the Ministry of Information, in Teheran, or, in the provinces, to the Information and Radio Office.

SECTION III

OBLIGATIONS OF REPORTERS

Art. 8. Reporters are required:

(*a*) To obtain accurate information and report it to the establishment employing them;

(*b*) When attending official ceremonies, to show to the competent officials their press card bearing their photograph and the seal of the Press Office, in the capital, or, in the provinces, the Information and Radio Office;

(*c*) To seek information only within the limits of their competence as indicated on their press card.

Art. 9. Reporters may not obtain information about police or military authorities or photograph military establishments or places connected with public security without the permission of the appropriate authorities.

Art. 10. Reporters may not obtain information on or photograph the proceedings of trials in the courts and the public prosecutors' offices without the consent of the president of the court or the public prosecutor as the case may be.

Art. 11. Reporters may not report on or photograph secret sessions of the courts or report on government secret documents on any grounds.

Art. 12. A reporter may not interfere with or make changes in the interviews he reports. Matters relating to official or governmental authorities must be reported in the same words as are used by those authorities in their statements.

SECTION IV

MISCELLANEOUS PROVISIONS

Art. 13. Newspapers and magazines in Teheran and the counties shall submit written recommendations with respect to their reporters to the Ministry of Information, in Teheran, or, in the provinces, to the Information and Radio Office of the province concerned within one month following the promulgation and publication in the Official Gazette of these regulations, so that press licences may be issued to them, after inspection of the required documents.

NOTE. Press cards issued by the Ministry of the Interior or governors' offices under Regulation No. 49029, approved on 26 Mehr 1337 (18 October 1958) by the Council of Ministers, shall remain in force until their period of validity expires.

Art. 14. In counties where there is no Information and Radio Office, the Ministry of Information may delegate all or some of the functions specified in these Regulations to the governors, who shall take the necessary measures on behalf of the Ministry of Information.

Art. 15. The press cards of persons violating articles 1, 4, 8, 9, 10, 11 and 12 shall be cancelled by the Ministry of Information or the provincial Information and Radio Office. If such persons are liable to more severe penalties under criminal law, the Ministry of Information shall request the institution of criminal proceedings against them.

Art. 16. The police and *gendarmerie* shall be responsible for preventing unlicensed reporters or those whose licences have expired from acting as reporters.

ACT ESTABLISHING HOUSES OF EQUITY

Approved by the National Consultative Assembly on 22 Favardin (11 April 1965) and by the Senate on 18 Ordibehesht 1344 (8 May 1965)

Art. 1. With a view to investigating and resolving conflicts among the rural population, the Ministry of Justice shall, by stages and with prior notice, establish a council, to be known as a House of Equity, for each village or group of villages.

Art. 2. Each of the councils mentioned in article 1 shall be composed of five reliable persons of the locality, who shall be elected for a three-year term by the inhabitants of the area of jurisdiction of the House of Equity in question. Each House of Equity shall have three principal members and two alternate members.

Art. 3. Electors shall possess the following qualifications:

1. Be of Iranian nationality;
2. Be at least twenty years of age;
3. Be a local resident;
4. Have no record of effective penal conviction;
5. Have legal capacity.

Art. 4. Candidates shall possess the following qualifications:

1. Be at least thirty-five years of age;
2. Have a reputation for piety, honesty and integrity;
3. Be married;
4. Possess the qualifications prescribed in article 3.

NOTE. The headman of a village may not be elected to a House of Equity unless he resigns from the position of headman.

Art. 5. The elections to each House of Equity shall be conducted by the district governor

assisted by two reliable persons of the locality to be appointed by the justice of the peace, under the latter's supervision. The procedure for holding the elections and determining the successful candidates shall be prescribed in regulations to be drawn up by the Ministry of Justice and the Ministry of the Interior.

Art. 6. After the elections have been concluded, the district governor shall send the names of the persons who have been elected to membership in the House of Equity to the local justice of the peace, who, provided that the elections have been found in good order, shall issue and transmit to them their credentials.

Art. 7. At their first session, the members of the House of Equity shall appoint from among themselves a President, two principal members and two alternate members. In the election of the principal members, literate persons shall have priority, and if none of the members is literate, they shall elect another reliable person of the locality who is literate as a principal member of the House of Equity.

The member with the least number of votes shall then be an alternate member. The alternate members shall serve in the place of the principal members in the event of the latters' absence or inability to attend.

Art. 8. Membership of the House of Equity is honorary and unpaid.

Art. 9. If disorder or remissness is observed in the performance of the functions assigned to the Houses of Equity, the Ministry of Justice may dissolve any one of them or remove the offending member from office. In the event of dissolution, elections for the House of Equity in question shall be held not later than one month after the dissolution.

In the event of the dismissal, death or resignation of a member of a House of Equity, provided that there are more than six months to run before new elections, a new member shall be elected from among those residents of the village who are duly qualified, in accordance with the pertinent regulations.

FUNCTIONS AND COMPETENCE OF THE HOUSES OF EQUITY

Art. 10. The Houses of Equity shall endeavour to bring about a peaceful settlement in the case of all disputes and suits between village residents.

Art. 11. In civil suits the competence of the Houses of Equity shall be limited to:

1. The investigation of financial suits where the claim does not exceed the sum of 5,000 rials.

2. The investigation of suits concerning movable property where the claim does not exceed the sum of 20,000 rials, provided that both parties to the suit give written notice of their consent.

3. The investigation of suits concerning illegal possession, abatement of nuisance or restraint of the exercise of rights within the meaning of amending article 1 of the Act for the prevention of illegal possession, and the issuing of appropriate orders.

The orders of the House of Equity in this instance shall not affect the determination of the ownership rights of the two parties to the suit.

If a suit concerning ownership of land, buildings or endowed property or illegal possession of land is a subject of dispute between two or more villages, the House of Equity shall not have competence to investigate it.

Art. 12. In suits concerning illegal possession, abatement of nuisance and restraint of the exercise of a right, if the House of Equity finds the complaint justified, it shall issue the necessary orders for abatement of the nuisance, removal of the restraint or restoration of possession, and the headman of the village shall be responsible for the immediate execution of such orders. The headman may seek the aid of the police. The interested party may within one month after notification of the order of the House of Equity lodge a complaint with the local district court; if the court finds the complaint justified, the aforesaid order shall be revoked and the court shall investigate the case and issue a verdict, in accordance with the law. The decision of the district court shall be final.

Art. 13. In the case of minors, other legally incompetent persons and missing persons, the House of Equity shall, if arrangements have not yet been made by the legal authorities for the management of the estates of the aforesaid persons, take such measures as it deems necessary for the protection of their property, report the case to the local justice of the peace and suggest such means as it deems useful for the protection of their interests.

Art. 14. In criminal cases the competence of the Houses of Equity shall extend to:

1. Investigation and the issuing of a verdict in the case of minor offences under the regulations which the Ministry of Justice and the Ministry of the Interior shall draw up, having regard to rural common law, in respect of offences punishable by a fine of not more than 200 rials.

2. Ensuring preservation of the material evidence relating to the crime.

3. Prevention of the flight of the accused in the case of witnessed offences and immediate notification of the nearest legal authority or police officer. The headman of the village shall be responsible for executing the order of the House of Equity for the prevention of the flight of accused persons, reporting the case immediately to the nearest legal authority or police officer and presenting and handing over the accused.

Art. 15. The procedure for the investigation of a case in the Houses of Equity shall be as follows: the plaintiff shall first lodge his complaint, in writing or orally, with the local resident Literacy Corps officer, who shall enter details of the complaint in the file, summon the

defendant in whatever manner he thinks fit, inform him of the complaint and explain it to him, enter his reply in the file and send the file to the House of Equity for investigation.

Art. 16. At the hearing, the Literacy Corps officer shall attend at the summons of the House of Equity, read the contents of the file and enter therein the investigatory proceedings, the statements of both parties and the decisions of the House of Equity.

Art. 17. If the Literacy Corps officer is absent or unable to attend or if for any reason his services cannot be employed, the local justice of the peace may delegate his functions to the teacher, a member of the House of Equity, the headman or some other reliable person.

Art. 18. Should any member of a House of Equity be related by blood or marriage to the parties to a suit, this shall be deemed grounds for challenge and objection. Similarly, if any member is a party to a suit he may not take part in its investigation.

In such a case an alternate member shall take part in the investigation, and if the majority of members are disqualified, the President or the member of the House of Equity who is not disqualified shall at his discretion invite one or two reliable persons of the locality to participate in the investigation.

Art. 19. If a suit concerns residents of the areas of jurisdiction of two or more Houses of Equity, the House of Equity of each area shall appoint one of its members as its representative. The said representatives shall request the House of Equity of the nearest area whose residents are not concerned in the suit to appoint a representative to take part in the investigation.

The said representatives shall elect one of their number as President of the House of Equity and shall proceed to investigate the case and issue a verdict therein. In cases where this article applies, the mode of constitution of the House of Equity shall be determined by the local justice of the peace.

Art. 20. Investigation of a case in a House of Equity shall be free of charge and not subject to the formalities of legal procedure. A House of Equity may summon the two parties to a suit and hear their depositions and statements in any manner it thinks fit and may make any kind of investigation it deems necessary, such as hearing the testimony of witnesses, visiting the scene of the crime or consulting a reliable expert, or may delegate one of its members to do so.

The absence of either party to a suit, after due notification of the time of the hearing, shall not constitute an impediment to the investigation and the issuing of a verdict, unless the absent party has a valid reason for his failure to attend.

Art. 21. The sessions of the House of Equity shall be held in one of the public places of the village, such as the mosque, the school, the passion play theatre, or any other place which the President of the House of Equity deems appropriate, as occasion arises.

Art. 22. The House of Equity may delegate to one of its members the organization of the investigations mentioned in article 20 and matters relating to the preparations for the hearing and the arrangement of the evidence and of the bases for the judgement, and may, similarly, delegate to one of its members the function of preserving the material evidence relating to a crime and protecting the property of minors and incompetents.

Art. 23. The House of Equity shall consider the evidence in the case, the depositions of the two parties and the result of the investigations and, having regard to the exigencies of justice, equity and local custom, proceed by arbitration to settle the case and issue a verdict. The verdict of the House of Equity shall in every case be based on the majority of the votes and delivered in the presence of the parties.

Art. 24. After the House of Equity has issued its verdict, the Literacy Corps officer or his deputy shall, in accordance with article 17, record the verdict in writing and send it to be signed or sealed by the members and shall announce and explain the verdict to the two parties to the suit in whatever way he thinks fit, record any statements they may wish to make and transmit all the documents to the local police court.

Art. 25. After the documents reach the peace court, the justice of the peace shall, if he finds the verdict sound with respect to competence and observance of the other stipulations of this Act, issue an order for its execution at the request of the interested party, assign the task of executing it to the executive officer of the court, the local headman or any member of the House of Equity he considers suitable and issue the necessary instructions for the execution of the verdict. Otherwise, he shall, after an investigation, rescind the verdict of the House of Equity and, at the request of the interested party, proceed to carry out an investigation in accordance with the law. In such a case, the verdict of the peace court shall be final.

Art. 26. Suits which fall within the competence of the Houses of Equity and which were initiated before the establishment of the Houses of Equity shall continue to be dealt with by the authorities previously competent to do so.

Art. 27. With respect to all issues arising out of the Land Reform Regulations, the said Regulations shall apply and the investigation of such issues shall be outside the competence of the Houses of Equity.

Art. 28. The Ministry of Justice shall draw up and put into force the necessary regulations for the implementation of the provisions of this Act.

Art. 29. The Government shall be responsible for giving effect to this Act.

ACT ABOLISHING THE PENALTY OF FLOGGING

Approved by the Senate on 10 Khordad 1344 (31 May 1965)
and by the National Consultative Assembly on 6 Tir 1344 (27 June 1965)

Sole article. (*a*) The note to article 173 of the Penal Code is amended as follows:

In respect of this article, the infliction of an injury with a knife or any type of weapon shall be punishable, if the offence falls under the first part of this article, by a term of corrective detention of six months to two years and, if it falls under the latter part of this article, by a term of corrective detention of three months to one year. In addition, the Court may, in either case, sentence the offender to compulsory sojourn in a locality within the country to be designated by the Ministry of Justice for a period of six months to two years. Prosecution under the terms of this note shall not be dependent on the charge brought by the injured party, nor shall withdrawal of the charge affect the sentence.

(*b*) The provisions for the penalty of flogging in article 3 of the Act concerning persons removing or taking possession of another person's property, approved on 2 Jauzà' 1302 (23 May 1923), and in article 273 *bis* of the Penal Code shall be deleted.

(*c*) In the case of persons liable to prosecution on a charge of inflicting injury or death by means of a knife or any other type of weapon, if the evidence indicates that the charge is justified, a detention order shall be issued and shall remain in effect until the verdict is issued.

ACT TO INCREASE THE PENALTY FOR AIDING UNAUTHORIZED PERSONS TO CROSS THE FRONTIER

Approved by the National Consultative Assembly on 14 Ordibehesht 1344
(4 April 1965) and by the Senate on 24 Khordad 1344 (14 June 1965)

Sole article. (*a*) Any person who enables another to cross the frontier without authorization or in any way facilitates such unauthorized crossing shall be sentenced to corrective detention for a term of six months to two years or to payment of a fine of 5,000-100,000 rials or both these penalties.

(*b*) Any means of transport utilized for such purpose which belongs to the offender or was utilized with the knowledge of its owner shall be sequestered temporarily by an order of the examining magistrate or the public prosecutor pending a final verdict.

If the means of transport belongs to the offender or was utilized with the knowledge of its owner, the court shall include in the sentence an order for the confiscation of the means of transport to the State or its restitution.

(*c*) If the offence causes the death of a traveller who is not authorized to leave the country and provided that the offence does not entail a heavier penalty, the offender shall be sentenced to imprisonment at hard labour for a term of three to ten years. If the offence causes the loss of or permanent injury to a limb, chronic illness or the loss of any of the senses, the offender shall be sentenced to solitary confinement for a term of two to five years.

IRAQ

During 1965, the following laws have been promulgated:

1. *Law No. 4 of 31 January 1965 on National Security* [1]

Under article 1 of this Law, a state of emergency may be declared, if there is the danger or in any case the threat that an aggressive raid or a war may occur; if a serious trouble has developed or threatens to develop in the system of public security; and if a general epidemic or disaster has broken out.

The declaration of a state of emergency, as stated in article 2, shall be made by ordinance and needs the approval of the Council of Ministers.

Article 4 provides that in a state of emergency the Prime Minister is empowered, *inter alia*, to restrict the freedom of movement and residence; to intern suspects and to detain them in places designated for the purpose; to search persons and places; to curb the freedom of assembly; to dissolve societies, clubs and unions considered a danger to public order and security; to restrict travelling outside the country; to impose censorship on newspapers, magazines, books and all printing matters; and to censor correspondence.

Other provisions of the Law deal with the establishment, the composition and the competence of the Court of State Security.

[1] *Waqayi' al-Iraqiya*, No. 1071, of 6 February 1965. An English translation of the law appears in *The Weekly Gazette of the Republic of Iraq*, No. 24, of 16 June 1965.

2. *Law No. 43 of 2 March 1965 on the ratification of the Arab Labour Charter* [2]

The Charter was drawn up at the First Conference of Arab Ministers of Labour held at Baghdad between 6 and 12 January 1965.

In this Charter the Arab States agree, *inter alia*, that their aim is to achieve social justice and to raise the standard of the labour force in their respective countries; that similar standards be attained in their respective labour legislation; that joint studies be carried out in the field of planning and employment of the labour force; that in employing people priority be given to workers from Arab countries; that a plan be drawn up concerning vocational training; that a joint study be made on minimum standard wages; that experts, specialists and technical assistance be mutually exchanged in various fields of labour; that the Arab Ministers of Labour meet once a year in order to exchange views on Arab labour affairs as well as to coordinate the policy of the Arab States in international labour conferences; and that an Arab Labour Organization be established.

3. *Law No. 46 of 2 March 1965 on the ratification of the Constitution of the Arab Labour Organization* [3]

Article 1 of this Constitution establishes the Arab Labour Organization, of which the function shall be to accomplish the aims set forth in the Arab Labour Charter. Article 1 further stipulates that the Arab Labour Organization shall be considered a Specialized Agency within the scope of the League of Arab States.

Other provisions of the Arab Labour Organization deal with the purpose of the organization; its organs; its budget; and its relationship with foreign and international labour organizations.

[2] *Waqayi' al-Iraqiya*, No. 1095, of 1 April 1965. An English translation of the law appears in *The Weekly Gazette of the Republic of Iraq*, No. 36, of 8 September 1965.

[3] *Ibid.*

IRELAND

NOTE[1]

The most important enactment of 1965 was the Succession Act, 1965. This Act consolidates and amends the law relating to the devolution, administration, disposition by will and distribution on intestacy of the property of deceased persons. It provides for the complete assimilation of the law respecting real and personal estate so that realty devolves and is distributed in the same manner as personalty. It abolishes the pre-existing rules of intestate succession (both as to the descent of realty to the heir-at-law and the distribution of personalty to the surviving spouse, issue and next-of-kin) and replaces them by new rules which are applicable to all property. There are important provisions giving the surviving spouse of a testator a legal right to a share in his estate and the children the right to apply to the court to have just provision made for them out of the estate.

The Extradition Act, 1965, enables the multilateral Convention on Extradition prepared by the Council of Europe to be ratified by Ireland. The Act is a comprehensive measure replacing the pre-1922 law governing not only extradition to countries outside Britain and Ireland but also the enforcement in Ireland of warrants issued in Britain or Northern Ireland. Extraditable offences are not specifically listed as heretofore; instead an extraditable offence is defined by reference to the maximum penalty which may be imposed for it under the law of the two countries concerned (at least one year) or, where the person has already been sentenced, by the actual penalty imposed (at least four months).

The Social Welfare (Miscellaneous Provisions) Act, 1965 made provision for increases in the rates of the principal social insurance and assistance payments. Increases in the weekly rates of unemployment assistance and of non-contributory old age, blind, widows' and orphans' pensions became effective on 1 August 1965. Increases in the rates of disability benefit, unemployment benefit and maternity allowance became effective on 3 January 1966, and in the rates of contributory old age pension, widows' pensions and orphans' allowance from 7 January 1966. Maternity grant was increased with effect from 1 January 1966. An important feature of this Act is the raising of the remuneration limit for compulsory insurance of non-manual workers under the Social Insurance Scheme from £800 to £1,200 a year. This Act also includes provisions for a major change in the unemployment assistance scheme in relation to the assessment of means of smallholders in congested areas. Means derived by such smallholders will, in general, no longer be established by reference to the actual number of stock, area and type of crops, etc., on a holding but by reference to the productive capacity of the holding as indicated by the rateable valuation of the land. The object is to make small farmers in the congested areas free to work their holdings to maximum capacity and to participate readily in all schemes designed to increase agricultural output without being concerned about losing some or all of their unemployment assistance as a result of expanding farm incomes arising from greater effort and enterprise on their part.

[1] Note furnished by the Government of Ireland.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS (1965)[1]

I

Italy's 1965 legislation contained a number of provisions intended to give fuller practical expression to a basic civil—and family—right: the right to housing (Universal Declaration of Human Rights, art. 25).

Legislative Decree No. 1022 of 6 September 1965 (*Gazetta Ufficiale* No. 224 of 6 September 1965), containing provisions for the encouragement of building, became, after amendment, Act No. 1179 of 1 November 1965 (*G.U.* No. 275 of 3 November 1965). The Act provides specifically for State intervention in the housing sector on lines similar to those previously adopted in respect of the building industry in general. Its purpose is to promote one of the principal objectives of the programming policy by encouraging universal home ownership. The Act is twofold: besides the now traditional provisions for annual popular housing subsidies, on the lines already established by an earlier Act (No. 408 of 2 July 1949), it also breaks new ground by reducing the cost of building credit. Most of the amendments introduced into the text when the Legislative Decree passed into law affect this second aspect.

Title I of the Act (comprising the first three articles) is called "Provisions regarding the construction of popular housing" and provides institutions and bodies engaged in the construction of low-priced popular housing with subsidies totalling 6,000 million lire over a period of three consecutive financial years. (It is expected that with these subsidies a construction programme costing 150,000 million lire may be carried out.) The basis on which the funds are to be apportioned is left to be decided by the Minister of Public Works, the aim being—as the report to the Senate shows—to intervene immediately and on an adequate scale in areas most deeply affected by the building crisis and the resulting unemployment.

Title II of the law ("Building Credit Facilities") authorizes the appropriate bodies to grant loans—protected by a 44 per cent State guarantee—for the execution of a special programme to encourage the construction and purchase of housing of a standard specified in the Act itself. The loans may cover up to 75 per cent of land purchase and building costs, or, when an existing structure is to be acquired, 75 per cent of valuation. They may be granted only when the property is first acquired, must be amortized over a period of not more than twenty-five years, with option to repay earlier, and the total annual cost to the borrower, excluding capital repayments, may not exceed 5.5 per cent per annum of the amount of the loan (art. 4).

Article 5 provides that the conditions on which loans may be granted are to be agreed upon between the Minister of the Treasury and the Minister of Public Works, on the one hand, and the Land Credit and Building Credit institutions on the other. Article 6 stipulates that the Ministry of Public Works shall pay those institutions a subsidy equal to the difference between the effective cost of the operation and the amount borne by the borrowers.

Article 8 sets out the objective and subjective conditions to be fulfilled by the borrower. In order that the housing in question shall conform to normally accepted criteria of utility and necessity, it fixes the maximum area of each apartment and the number of rooms to which each family is entitled according to the number of its members, and also lays down standards of hygiene, comfort etc., (see Act No. 408 of 2 July 1949). The maximum price per square or cubic metre and the maximum cost of the land are to be determined by the Ministry of Public Works. Every Italian citizen resident in the commune in which the dwellings are constructed shall be entitled to such accommodation, provided that he owns no other dwelling in the same commune, has not previously owned a dwelling constructed with the aid of subsidies from the State, province, etc., and that his income, as attested by the tax authorities, does not exceed a certain amount.

Article 12 is of particular importance since its provisions are intended to prevent speculation in housing covered by the Act.

This was not the only legislation affecting the housing industry. Act No. 217 of 29 March 1965 (*G.U.* No. 87 of 6 April 1965), entitled "Measures to expedite the building programmes of the

[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Comunità Internazionale*, a publication of that Association, and government-appointed correspondent of the *Yearbook on Human Rights*.

Workers' Housing Board (*Gestione case per lavoratori*) and other bodies engaged in the construction of low-cost and popular housing", is intended to co-ordinate and supplement the steps already taken, under Act No. 167 of 18 April 1962, to encourage the acquisition of building sites for the same purpose. The 1962 Act had introduced controls which were intended to put an end to speculation in building sites so that the total cost of popular housing should no longer be swollen to such an extent by the cost of the land itself. The Act makes it obligatory for communes with more than 50,000 inhabitants and for provincial capitals to allocate zones for the construction of popular housing and for the ancillary utilities and amenities, including green spaces. For all other communes, such zoning remains optional; however, if they take no steps themselves, the law empowers the Ministry of Public Works to intervene.

In future, under the 1965 Act, the Workers' Housing Board (*Gestione case per lavoratori*) and other appropriate bodies are authorized, where necessary, to take the place of the communes in expropriating and providing with essential urban services land included in zoning plans approved by the communes under the 1962 Act but not put into effect.

In the case of communes for which the planning in question is optional and which have taken no steps in the matter, the above-mentioned bodies are authorized to acquire land, if necessary by expropriation, but only within the areas zoned for residential uses in the master planning schemes or building programmes.

Finally, Act No. 225 of 30 March 1965 (*G.U.* No. 89 of 8 April 1965) contains provisions designed to permit, in the case of an earthquake, the rapid freehold sale of housing constructed at State expense.

With regard to social security (Universal Declaration of Human Rights, article 22), mention should be made of Act No. 488 of 23 April 1965 (*G.U.* No. 132 of 28 May 1965) which lays down provisions for industrially disabled persons and their spouses, i.e., those disabled and incapacitated as a result of an accident the causes of which were connected with their employment, either military or civilian, by the State or by local, territorial or institutional bodies. Recently, the benefits provided for this category, especially those relating to public assistance services, have approximated much more closely to those granted to war disabled. Hence, the Act in question is designed to extend to the industrially disabled various provisions already laid down for the war disabled under Act No. 1240 of 9 November 1961.

Article 1 lays down that industrially disabled and incapacitated persons who are classified according to infirmity in the second to eighth categories, who are below the age of sixty, and who cannot be employed because their state of health is such as to constitute a risk for the employer, shall be treated as "unemployable", that is, registered in the first category. Special financial provisions are laid down for the "unemployable", both before and after they reach pensionable age. Provision is also made for the payment of a special allowance to other industrially disabled persons registered in the second to eighth categories.

Lastly, we would mention the "consolidated regulations for compulsory insurance against occupational accidents and diseases", issued in Presidential Decree No. 1124 of 30 June 1965 (*G.U.* ord. suppl. to No. 257 of 13 October 1965) which, in 296 articles, lays down the regulations for insurance against occupational accidents and diseases in industry (Title I) and in agriculture (Title II), as well as special regulations for specific categories (Title III).

II

Treaties and Conventions relating to Human Rights which entered into force in Italy in 1965

Agreement between Italy and Switzerland concerning the migration of Italian workers to Switzerland, with Final Protocol and Joint Statements, concluded at Rome on 10 August 1964.

Made effective in Italy by Act No. 61 of 15 February 1965 (*G.U.* No. 54 of 2 March 1965).

European Agreement on the abolition of visas for refugees, adopted at Strasbourg on 20 April 1959.

Made effective in Italy by Presidential Decree No. 322 of 29 January 1965 (*G.U.* No. 101 of 22 April 1965).

European Social Charter, adopted at Turin on 18 October 1961.

Made effective in Italy by Act No. 929 of 3 July 1965 (*G.U.* suppl. to No. 193 of 3 August 1965).

Convention relating to the Status of Refugees, adopted at Geneva on 28 July 1951 (already made effective in Italy by Act No. 722 of 24 July 1954).

Withdrawal of the reservations made by Italy at the time of signature and confirmed at the time of ratification to articles 6, 7, 8, 19, 22, 23, 25 and 34 (*G.U.* No. 195 of 5 August 1965).

European Convention concerning social security of workers engaged in international transport, signed at Geneva on 9 July 1956.

Made effective in Italy by Act No. 1308 of 29 October 1965 (*G.U.* No. 305 of 7 December 1965).

III

Two related decisions of the Constitutional Court concerning the protection of the right of defence in any legal proceedings further confirmed the prescriptive character of article 24, second paragraph, of the Italian Constitution, which states that "The right of defence at every stage and level of juridical proceedings is inviolable", a precept similar to article 11 (1) of the Universal Declaration, which establishes the principle of the guarantees necessary for defence.

These decisions were particularly important since they were intended to reconcile and bring into line with the Constitution a difference of opinion which had arisen between two different schools of thought among the ordinary judges (decisions No. 11 of 4 February 1965 and No. 52 of 16 June 1965).

In an order dated 7 April 1964 arising from proceedings against three accused, the Court at Varese had raised the question of the constitutionality of article 392, 1, of the Code of Penal Procedure in so far as it affected articles 304 *bis*, 304 *ter* and 304 *quater* which were added to the Code of Penal Procedure by Act No. 517 of 18 June 1955 and which stem from article 24, second paragraph, of the Constitution. In fact, on the basis of article 392, 1, which provides that the rules established for formal preliminary examinations are to be observed in summary preliminary examinations "in so far as they are applicable", the prevailing trend of jurisprudence—confirmed by rulings of the combined divisions of the Court of Cassation—has been that the provisions of articles 304 *bis* (which specifies the preliminary examinations at which defending counsel may be present), 304 *ter* and 304 *quater* (which respectively lay down rules for notifying the defence and for filing documents) are not considered to extend to summary examinations. Hence the alleged conflict with article 24, second paragraph, of the Constitution which states that the right of defence is inviolable, a principle which does not appear to be subject to limitations depending on the type and form of the examination, i.e., whether it is summary or formal.

In its decision of 4 February 1965, the Constitutional Court declared that the question of the constitutionality of article 392, 1, of the Code of Penal Procedure did not arise, for the simple reason that, in the Court's opinion, the provisions of articles 304 *bis, ter* and *quater* were also applicable to summary examinations and therefore there was no contradiction between article 392, 1, of the Code and article 24, second paragraph, of the Constitution.

In its long and detailed judgement, the Court first declared that article 392, and in particular the proposition called into question, did not appear to justify the establishment of a distinction between the two forms of preliminary examination. The expression "in so far as they are applicable", which is often used by the legislator when the provisions of a given regulation are extended to other cases, is intended only to convey the usual warning that cases to which it is not applicable should be borne in mind: specifically, there was nothing to indicate that the phrase "in so far as they are applicable" empowered the person interpreting the law to make an assessment which would lead him to admit or deny the applicability of the provisions in question (articles 304 *bis, ter* and *quater*) because he considered the two forms of examination to be of a different nature.

Having said that, the Court sought to prove that the sponsors of the 1955 amendments had had no intention of limiting the applicability of articles 304 *bis, ter* and *quater* to formal examinations and that consequently the legislator had had no intention of establishing a distinction between the two types of preliminary examination. The Court then refuted the main arguments adduced by others to show that, in any event, such a distinction effectively existed in the Code: namely (*a*) that summary examinations were in the nature of an exception as compared with formal ones; and (*b*) that the different character and purpose of summary examinations made it impossible to extend to them the provisions of articles 304 *bis, ter* and *quater*.

In the Court's opinion, argument (*a*) above was not realistic for two reasons: firstly, because of the extensive jurisdiction attributed by the Code itself to summary examinations [2] embraces "a whole range of numerous and often serious cases which, together, may be invoked in rebuttal of the claim that summary examinations are exceptional"; secondly, because the summary examination has been widely used in practice, having in fact been adopted in the courts for all cases for which the formal procedure is not obligatory. The Court therefore concluded that the summary procedure "was followed in a very considerable number of criminal cases in which, according to the narrow interpretation, the guarantees provided under articles 304 *bis, ter* and *quater* would be lacking".

It was also impossible—the Court continued, in reply to argument (*b*) above—to draw a distinction between the two forms of preliminary examination on the grounds that summary examinations have a different character and purpose because the evidence is clear and hence the investigation is rapid and straightforward. The Court cited a series of cases (including the "very broad" categories of offences within the jurisdiction of the *pretore* or of the Juvenile Court) in which the evidence was far from clear and which required delicate and complex investigation. [3] The summary examination could not therefore "be defined simply as a method of checking evidence that had already been established".

In reply to the argument that summary and formal examinations are concluded in different ways, "it may be said", the Court stated, "that the very promptness and urgency of the summary examination which, barring dismissal, results in the application for a direct summons to trial, far from justifying the lack of certain substantial guarantees for the defence, makes them at least equally necessary".

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[2] Summary examinations are instituted (apart from cases of expedited proceedings and orders for the payment of fines) for all offences within the jurisdiction of the *pretore* or of the Juvenile Court, and also for the categories indicated in article 389, i.e. offences falling within the jurisdiction of the Assize Court or the *Tribunale* when the accused has been caught in the act; offences committed by a person under arrest or detained for security reasons; offences to which the accused has confessed, etc.

[3] For example, cases where the seriousness of the damage resulting from certain offences must be assessed or offences within the jurisdiction of the Juvenile Court, when a thorough investigation is essential because of the nature of the accusations, the personality of the offender or his environment.

After refuting still further claims that articles 304 *bis, ter* and *quater* were not applicable to summary examinations, the Court concluded as follows: "Of all the arguments adduced none is sufficient to prove that the two forms of preliminary examination, even with all their distinctive features, are not substantially the same, when we consider the reasons which led the legislator to frame the articles in question. Nevertheless, even if it is admitted, as a hypothesis, that some element of doubt subsists, the Court holds that it can only be resolved in favour of the broader interpretation, both because this ensures the full observance of the principle set out in article 24 of the Constitution, and because the widest possible application of the right of defence ... constitutes the greatest protection for the authority and prestige of judicial decision".

The above-mentioned judgement of the Constitutional Court did not, however, result in a full application of articles 304 *bis, ter* and *quater* to summary proceedings.

In an order dated 4 March 1965, in connexion with criminal proceedings against one accused, the *pretore* of Imola raised the question of the constitutionality of article 392, 1, of the Code of Penal Procedure on the ground that the phrase "in so far as they are applicable", as it related to articles 304 *bis, ter* and *quater* of the same Code, conflicted with article 24 of the Constitution.

Having quoted decision No. 11 dated 4 February 1965 of the Constitutional Court, the judge in question pointed out that a number of subsequent decisions by ordinary judges had not conformed to it. In any event, he continued, two conflicting arguments about the interpretation of that decision had been put forward, even by judges who had applied it. According to one argument, the decision was purely interpretative and therefore articles 304 *bis, ter* and *quater* of the Code of Penal Procedure were also applicable to proceedings which had taken place prior to the decision and which had not been covered by it; according to the other argument, the decision was effective only from the day following its publication, as laid down in article 136 of the Constitution and article 30 of Act No. 87 of 11 March 1953.

Some uncertainty appears to have arisen, therefore, both as to the existence of the right to defence in summary examinations and as to the validity of summary examinations completed before the Court's decision, in which the rules governing formal examinations were not applied.

Hence the necessity for a further decision by the Constitutional Court in order to resolve such doubts.

In its decision of 16 June 1965, after having restated the interpretation of article 392, 1, which it had given in its earlier decision of 4 February 1965, the Court observed that experience subsequent to that decision had shown that the ordinary judges—who since 1958 had opposed the foregoing interpretation of article 392 (the only interpretation in conformity with article 24 of the Constitution)—still maintained, because of the exceptional nature of the summary examination, that the wording of that article precluded the extension to such an examination of the guarantees of the right of defence introduced into the Code in articles 304 *bis, ter* and *quater*. "Interpreted and applied in such a way", the Court stated, "the provisions of article 392, 1, continue in actual practice to be incompatible with the Constitution". It was clear, the Court added, that, when the exercise of the right of defence was incompatible with the conduct of the summary examination, the examination itself was in direct conflict with article 24 of the Constitution.

The Court, standing firm by its conviction that no natural incompatibility existed between the summary examination and the exercise of the right of defence, declared, therefore, that "with reference to article 24 of the Constitution, that part of article 392, 1, of the Code of Penal Procedure, namely, the phrase "in so far as they are applicable", which makes it possible not to apply to summary examinations the provisions of articles 304, *bis, ter* and *quater* of the same Code, is unconstitutional".

* * *

On the question of freedom of religion (Declaration, article 18) two decisions are worthy of mention, one by the Constitutional Court and the other by the Council of State.

In its decision No. 39 dated 13 May 1965, the Constitutional Court attempted to show that the special protection accorded by the law to the Catholic religion does not violate the right to freedom recognized for all religious denominations.

In an order issued on 21 February 1964—in the course of proceedings against a person accused of publicly defaming the State religion—the Court at Cuneo had raised the question of the constitutionality of article 402 of the Penal Code [4] in relation to articles 3, 8, 19 and 20 of the Constitution. [5] The Court considered that that article,

[4] Penal Code, article 402: "Anyone who publicly defames the State religion shall be liable to imprisonment for up to one year".

[5] *Constitution*, article 3: "All citizens are of equal social dignity and are equal before the law, without distinction as to sex, race, language, religion, political opinions or personal and social status ...".

Article 8: "All religious denominations are equally free before the law.

"Religious denominations other than Catholic are entitled to organize themselves according to their own statutes, in so far as these do not conflict with the Italian legal order.

"Their relations with the State are governed by law on the basis of agreements with the respective representatives."

Article 19: "Everyone has the right to make free profession of his own religious convictions in any form whatsoever, personally or as a member of an association; to advocate the doctrines thereof and to practise its worship in private or in public, provided they are not rites which offend public morality."

Article 20: "The ecclesiastical character and the religious or ritual aims of an association or institution may not be the grounds for special legislative restrictions or special fiscal burdens imposed by reason of its constitution, legal capacity or any form of its activities."

when compared with article 406 of the same Code, [6] accorded special privileged treatment to the Catholic religion which appeared to conflict with the principle of equality of religions in the above-mentioned articles of the Constitution.

The Court declared that the question of the constitutionality of article 402 of the Penal Code in relation to the above-mentioned articles of the Constitution did not arise for the following reasons:

Whereas article 3 of the Constitution explicitly precluded the idea that a difference of religion might give rise to a difference in the treatment of citizens before the law, the Court affirmed that article 402 of the Penal Code did not conflict with that constitutional principle in that its provisions, which applied indiscriminately to all persons subject to penal law, whatever their religion, did not detract from the principle of the equality of citizens before the law. In fact, religious convictions were of no importance in the process of identifying the "explicit substance of the offence" of public defamation, as provided in the said article; with regard to the "implicit substance of the offence", it could not be said that article 402 violated the legal equality of citizens, in that it established favourable conditions for those who professed the Catholic religion. The provisions of article 402 did not protect the Catholic religion as the personal property of those who adhered to it, nor did it confer upon them any personal advantage which could be equally protected: therefore, the party protected was not a single adherent to the Catholic religion.

Nor was the principle of equal freedom for religious denominations, set forth in article 8, first paragraph, of the Constitution, violated by article 402 of the Penal Code. "Equal protection of the freedom of religions, as a safeguard of manifestations of religious convictions by individuals or associations, does not necessarily mean that the judicial system cannot treat the various denominations differently in accordance with their respective importance in the State community, provided that the distinction thus made does not impose any limitation on the freedom of each or several denominations .... In particular, the equal right to freedom which is recognized for all religious denominations does not signify the right to equal protection under the penal law since the latter may be afforded not only to each denomination, but also to the religious sentiments of the majority of citizens, provided that it does not result in any limitation of that freedom."

The Court also observed that the greater extent and intensity of the legal protection which the Italian system afforded to the Catholic religion corresponded "to the greater extent and intensity of the social reactions aroused by offences against it as the professed religion of the majority of Italians. The importance attributed to that circumstance ... does not conflict with article 8, first paragraph, of the Constitution". In fact, the Court continued, while that protection acknowledged the special position of the Catholic Church as recognized in the Constitution (article 8, second and third paragraphs, and article 7), "it does not influence the freedom of activity of other denominations nor does it restrict manifestations of religious convictions by those who do not adhere to the Catholic religion".

Making public defamation of the Catholic religion an offence did not, in fact, limit the universal right recognized in article 19 of the Constitution. The public defamation of another person's religion was not included in the manifestations of religious conviction guaranteed by the Constitution; "it is not a way of professing one's own convictions, of advocating the doctrines thereof, or, even less, of practising its worship. It is true that the right to profess a religion and to advocate the doctrines thereof implies the right, equally guaranteed by the Constitution, to state one's own opinions on religions other than one's own and to discuss them, but this right does not permit one to defame publicly the religion of another person, thereby giving grave offence to it and making it an object of public derision. The fact that public defamation is an offence, even if this has only been established in relation to the religion professed by the majority of citizens, does not, therefore, limit the rights recognized in article 19 of the Constitution."

The Court, furthermore, pointed out that such rights were safeguarded in articles 403-406 of the Penal Code, which protected from public defamation persons who professed a religion, objects used in practising its worship and acts of worship. The above reasons also excluded any violation of article 20 of the Constitution.

The Court concluded as follows: "... Article 402 of the Penal Code does not protect a wider sphere of the Catholic Church's jurisdiction or activity than that of other religious denominations, since what is protected under penal law is not the legal competence or activities of the catholic Church but, as pointed out above, the religious sentiments of the majority of Italians." [7]

In its decision No. 978 dated 29 September 1965 (*Foro Italiano*, 1965, III, 511) on the question of Government authorization for the purchase of property by incorporated bodies, the Council of State considered invalid, on account of excess of authority, the refusal of an authorization for a non-Catholic religious association (*Assemblee di Dio in Italia*) to acquire a site for the construction of an oratory; the authorization had been refused on the grounds that there were not enough members of the association in the locality of the site. In its appeal against the order refusing the authorization, the association denounced, *inter alia*, articles 19, 20 and 8 of the Constitution.

The Council stated, first, that the principle invoked by the appropriate authority for refusing

[6] Penal Code, article 406: "Anyone who commits any of the acts mentioned in articles 403, 404 and 405 [of the Penal Code] against a denomination recognized by the State shall be punished according to the above-mentioned articles, but the penalty shall be reduced."

[7] In connexion with this decision of the Constitutional Court, see notes by Professor A. Piola, in *Foro Italiano*, 1965, I, 929, and L. Governatori Renzone, *Ibid.*, 1966, I, 20.

the authorization in question—namely, Act No. 1037 of 5 June 1850—did not concern a form of control which might be described as vigilance or protection, but provided only for a form of economic control concerned with the increase of capital: in other words, its only aim was to prevent incorporated bodies from accumulating excessive wealth. That was also the only aim of the Act concerning authorizations to religious associations of non-Catholic denominations to purchase property (Act No. 1159 of 24 June 1929, article 2).

Having established that point, the Council observed first of all that the legislator had put religious associations of non-Catholic denominations on a completely equal footing with all other bodies as far as the granting of authorizations to purchase property was concerned; there were therefore no grounds for maintaining that any investigation had been permitted in connexion with the religious authorization in question which differed from that normally carried out before the granting of any authorization to purchase.

In the case in question, the refusal to allow the purchase had been based on the consideration that, in the locality where the land to be purchased was situated, an insufficient number of members of the community were genuine supporters of the association: it must, therefore, be deduced that the authorization had been refused on grounds not covered by the terms of the Acts concerning the authorization of purchases; and that, therefore, such a refusal was, as had been claimed, a violation of the law and excess of authority on the grounds of misinterpretation and disparity of treatment.

It did not appear from the disputed provision that the refusal had been inspired, as the relevant legislation stipulated, by a concern to prevent an excessive concentration of property in the hands of the association which had applied for the authorization: there had been no reason for such concern in the specific instance, in view of the low value of the property which the association had intended to purchase.

On the basis of the foregoing arguments, the administrative authority which had refused the authorization appeared to have adopted a completely inconsistent attitude in holding that, since an oratory was a meeting place for a number of people professing the same religious creed, where there was no such community the purchase would be "an unjustified" increase of assets: such an interpretation of the laws in question would revive the provisions of articles 1 and 2 of Decree No. 289 of 28 February 1930, which had already been declared unconstitutional by the Constitutional Court in its decision No. 59 of November 1958.[8]

* * *

With regard to the elimination of all discrimination between the sexes in the sphere of labour, mention may be made of two decisions by ordinary judges, which declare null and void any provisions establishing an earlier retirement age for female than for male employees.

Under the two decisions, which were handed down on 10 May and 10 April 1965 by the Court of Rome (*Foro Italiano*, 1965, I, 1556), a provision in the staff regulations of a public institution and a clause in a collective labour contract, both introducing the type of discrimination in question, are declared to be in conflict with article 37 of the Constitution and therefore null and void.

Both decisions confirm that article's prescriptive character, which is nowadays regularly affirmed in legal theory and judicial practice; and add that a constitutional precept of this kind, in view of its binding nature, invalidates any provision, whatever its source, that would give rise to a situation in fact and in law at variance with the precept, which thus imposes a limitation upon freedom of contract.

Specifically, article 90 of the staff regulations of the Authors' and Publishers' Society (*Società autori ed editori*), by providing for the retirement of all female employees, regardless of the positions they occupy, at the age of fifty-five, ten years before the age-limit for men, "amounts to a violation of the constitutional rule establishing equal rights for workers of both sexes. It introduces, at the expense of the working woman, an unjustified discrimination which in turn affects all her other rights, inasmuch as those rights depend on security of employment".

The provision set aside by the second decision is article 38 of the national collective contract of 23 June 1961 for employees of the central municipal dairies under which the dairy may retire workers "upon their attaining the age of 60 in the case of men, or 55 in the case of women". This provision, too, was said by the Court to "place the female worker in a position inferior to that of the male worker, since, by providing for the cessation of her working activity... five years before the age-limit laid down for men, it deprives her of her earnings in respect of the latter period and correspondingly reduces her compensation for length of service".

Thus the provision in question, by introducing discrimination prejudicial to the material rights of women and based solely on difference of sex, violates the principle of equality of rights and remuneration established by article 37 of the Constitution.

* * *

A decision of particular social importance was handed down on 25 March 1965 by the Court at Vigevano (*Foro Italiano*, 1965, II, 394), which, *inter alia*, recognized in its widest implications the principle that the social values for which the legislator had provided legal safeguards were protected within the same limits and to the same degree *erga omnes*.

In the decision of the court of first instance, which was appealed to the above-mentioned Court, the *pretore*, passing judgement on a question of a wife's abandonment of the conjugal home,[9] had

[8] For this decision of the Constitutional Court, see *Yearbook on Human Rights for 1958*, pp. 126 *et seq.*

[9] See article 570, first paragraph, of the Penal Code, which makes abandonment of the conjugal home a punishable offence since it violates the family duty of maintenance.

handed down a verdict of guilty, not acknowledging the fact that the determining cause of the abandonment had been the husband's unjust and insulting conduct. The *pretore* had considered that the husband in his normal conduct was guilty only of verbal insults, and had then made "a paradoxical affirmation of principle", said the Court in its decision, "in the following terms: '... it is indeed clear that, although vulgar expressions are not to be tolerated in "good" families, the same is not true ... of working-class families in which such expressions are the order of the day not only in domestic life but also in conjugal relations'."

The Court criticized the reasons given for the decision in somewhat strong terms:

In the first place "... the *pretore* ... contrasted two types of family in order to establish a substantial difference in standards according to which both types of family, considered individually as distinct and autonomous entities in social life, should have the same right, protected by law, to family morality and order"; secondly, on that basis, the *pretore* "came to the conclusion that verbal insults, which were in fact prejudicial to that right where it existed in the highest degree, namely, it was claimed, only in the hypersensitive 'good family', were however, part of the lower standard of normal behaviour of a working-class family, and therefore, at least in that respect, did not affect the order and morality which were there to be found in their lowest degree".

"On the first point, it is obvious"—the decision continued—"that, despite the fact that it has emerged from flexible concepts which have permeated the social order in which they were originally formed and determined, through the particular loophole in the legislative formula in which they are contained, the right protected is directly conditioned by historical, environmental, evolutive and other factors, but not by factors deeply rooted in differences (cultural, religious, social, etc.) between individuals who possess that right. To hold the contrary view would necessarily deny the elementary principle that the law does not take into account the nature of the person whose interest is protected" (Article 3 of the Constitution) "and would undermine the very principle of legality".

On the second point (that the means used were prejudicial to that right)—the Court concluded—the statement that vulgar epithets were so normal in conjugal relations in working-class families that they lost their original power to offend the wife's honour and that the wife, therefore, could only lawfully abandon the family domicile if the husband beat her habitually and deprived her of the means of support, "is so far from legal and social reality, from experience of life as well as from the scientific concepts by which any decision must be guided, as to make any criticism unnecessary".

IVORY COAST

DECREE No. 65-133 OF 2 APRIL 1965 TO MAKE PROVISION FOR THE ADMINISTRATION OF THE PROVISIONS AS TO THE SETTLEMENT OF COLLECTIVE DISPUTES IN THE LABOUR CODE [1]

PART I

CONCILIATION

1. Any collective labour dispute shall immediately be notified by either party to the *préfet*, who shall instruct the Inspectorate of Labour and Social Legislation to intervene for the purpose of achieving a settlement.

If the inspector of labour and social legislation is unable to achieve a settlement or if circumstances warrant it, the *préfet* shall appoint a conciliation board consisting of not more than two employers and two workers, with the Director of Labour for the *département* or his representative as chairman.

Whenever the interests involved in the dispute extend beyond the *département*, the responsibilities of the *préfet* shall devolve upon the Minister of Labour, and the Director of Labour and Manpower of the Ministry of Labour shall act as chairman of the conciliation board.

The chairman of the conciliation board shall convene the parties, each of which may send a representative with powers to conclude a conciliation agreement.

If one of the parties does not appear, it shall again be summoned to do so within not more than two clear days. If it fails to obey, a report of non-attendance shall be made. This report, which shall specify the points in dispute, shall be equivalent to a report of failure to achieve conciliation.

2. On conclusion of the attempt at conciliation, the conciliation board shall make a report which shall be communicated immediately to the parties.

This report shall specify the points on which the parties have reached agreement, together with the points, if any, on which disagreement persists.

...

[1] *Journal officiel*, No. 19, Extraordinary, of 17 April 1965. Text of the decree in French and a translation into English have been published by the International Labour Office as *Legislative Series*, 1965-I.C. 3. For a summary of the Labour Code, see *Yearbook on Human Rights for 1964*, p. 165.

JAMAICA

NOTE [1]

1. During the year 1965 the following legislation was enacted relating to human rights as defined in Articles 22 and 26 of the Universal Declaration of Human Rights.

Article 22

The National Insurance Act, 1965, Act 38 of 1965 was enacted.

The Act establishes a system of national insurance by providing for payments in cash by way of old age pension, invalidity pension, widows' and widowers' benefit, orphans' benefit, special children's benefit, funeral grant, grants for old age, invalidity and orphanhood, and benefit in relation to incapacity, disablement or death arising from injury in employment.

For the purpose of the Act, "child" includes an adopted child, a step-child and other child, whether legitimate or not, living with the insured person and wholly or mainly maintained by him "mother" includes step-mother, "parent" includes step-parent and "spouse, wife or widow" includes a single woman or widow living with a single man or widower as his wife.

Article 26

The Education Act, 1965, Act 8 of 1965 was enacted.

The Act repeals the Education Law and provides for a co-ordinated system of public education, the registration and inspection of public schools and the registration of teachers.

2. There were two important judicial decisions on the interpretation of section 20(8) and of section 24 of the Constitution. Those sections relate to Articles 7 and 2 of the Universal Declaration of Human Rights, respectively.

(a) *Section 20(8) of the Constitution. Article 7 of the Universal Declaration of Human Rights. Regina* vs. *Nasralla (Court of Appeal)*

Please refer to report for 1963. [2] On appeal, it was held that section 20(8) of the Constitution is declaratory of the common law governing *autrefois acquit* and that the charge of manslaughter was one of which Nasralla could have been convicted on the trial of the earlier indictment for murder. Nasralla, having been acquitted of the charge of the murder and no verdict having been returned by the jury for the offence of manslaughter of which he could have been convicted at his trial for murder, cannot be again tried for the offence of manslaughter arising out of the same killing.

An appeal from this decision has been made to the Judicial Committee of the Privy Council.

(b) *Section of the Constitution. Article 2 of the Universal Declaration of Human Rights. Byfield* vs. *Allen (Full Court)*

This action was based on a claim by the plaintiff that the defendant, the Minister of Education, refused to approve his appointment to the post of Headmaster of the Trench Town Senior School and that the refusal was attributable wholly or mainly to the plaintiff's political opinions and was, therefore, discriminatory treatment within the meaning of section 24 of the Constitution. The decision of the full court presided over by the Chief Justice was that in matters where a Minister of Government is charged with acting with unlawful, improper and dishonest motives, then those who so allege must clearly and by credible evidence establish the allegation they make and that the plaintiff failed clearly, satisfactorily or sufficiently to establish that he had been treated by the defendant, while holding a public office of Minister of Education, in a descriminatory manner attributable wholly or mainly to the plaintiff's political opinions within the meaning of the Constitution.

An appeal from this decision of the full court is pending.

[1] Note furnished by the Government of Jamaica.

[2] See *Yearbook on Human Rights for 1963*, p. 185.

JAPAN

NOTE [1]

I. LEGISLATION

Public Nuisance Prevention Enterprise Corporation Law (Law No. 95 of 1 June 1965).

While the development of modern industries has brought about a rapid enlargement of the scale of factory facilities as well as a discharge of large amounts of harmful materials and effects, it has led to a comparative decrease in the agricultural population and a rapid increase in the population of urban areas. As more and more factories are concentrating in the outskirts of large cities, many city residents are being exposed to the cumulative and chronic influence of many evils, such as pollution of air and water, noises and offensive smells. Many of the factors of public nuisance result from the productive processes of industries attributable to both the factories and victims and have become aggravated quantitatively and qualitatively so that such public nuisance has to be taken up as a grave social problem and as an evil that may jeopardize the sound existence of people as human beings. In Japan various regulations have been made to eliminate public nuisance caused by industries, the Public Nuisance Prevention Enterprise Corporation Law being one of them with the purpose of creating measures for the prevention of such nuisance.

The Public Nuisance Prevention Enterprise Corporation is a juristic person established for conducting business necessary for the prevention of public nuisance in areas where factories and work shops have concentrated and public nuisance is or tends to become serious because of the pollution of air and water and other things as the result of industrial activities (hereinafter referred to as " the area concerned "), and also for contributing, through such measures, to the maintenance and improvement of the living conditions of people and the sound development of industries (Article 1 and Article 2 of the Law).

In order to attain this purpose, the Corporation carries out in the area concerned the following business (Article 18):

(1) To construct and sell soot, smoke, soiled water treatment and other kinds of facilities for preventing public nuisance, all of these to be put to the common use by factories or work shops;

(2) To construct and sell buildings for meeting the necessity of housing many factories and work shops in a common building in order to prevent public nuisance caused by industries;

(3) To readjust lands needed for the construction to be done collectively of buildings for factories or work shops which are to move from the area concerned for the purpose of preventing public nuisance caused by industries and in addition, to construct and sell facilities for preventing public nuisance caused by industries to be used by the said factories or work shops; and

(4) To lend to an enterpriser intending to construct soot, smoke treatment or other kinds of facilities for preventing public nuisance caused by industries for the common use by factories or work shops, funds necessary for constructing such facilities.

This Corporation is a special juristic person, placed under the supervision of the Minister of Health and Welfare and the Minister of International Trade and Industry (Article 31). Its written statement on methods of conducting business, business enforcement plans, budgets, etc., must be approved by the said two Ministers (Articles 20, 21 and 23). The Chairman of the board of directors and the secretary of the corporation are appointed by the said two Ministers (Articles 9, 11 and 12).

II. JUDICIAL DECISIONS

There is no judicial decision worthy of special attention from the point of view of human rights.

III. OTHER EVENTS

1. *Present situation of the system of Civil Liberties Commissioners*

The number of Civil Liberties Commissioners as of 31 December 1965 was 9,168, which showed a decrease by 51 as compared with the number as of the same date of the previous year. The number of women Commissioners was 994, which was 10.8 per cent of the number of whole Commissioners and is on the trend of annual increase.

[1] Note furnished by Mr. Tsuneo Horiuchi, Director, Civil Liberties Bureau, Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights.*

These Civil Liberties Commissioners are posted in cities, towns and villages throughout the country, continuing their efforts for performing the mission of protection of human rights in the respective communities. The average number of Civil Liberties Commissioners posted in a city is 6.1, in a town 2.2 and in a village 1.5. The main activities of the Civil Liberties Commissioners are represented by 1,214 cases of report and investigation of human rights violation cases and 97,108 cases of legal counselling concerning human rights.

The 1965 General Meeting of All Japan Federation of Civil Liberties Commissioners was held on 28 September 1965 at Beppu City, at which discussions were made and resolutions adopted on various matters.

2. *Human Rights Week*

The week from 4 December ending on Human Rights Day, 10 December, was fixed for the "17th Human Rights Week". During that week various activities for the dissemination of the thought of human rights were carried out throughout the country.

3. *System of legal aid*

The legal aid cases handled by the Legal Aid Association are on the trend of annual increase. The number of cases in which legal aid was applied for in 1965 (including the cases pending at the end of the previous year) was 3,601. Of these the Association decided to give legal aid in 1,314 cases. In the 1965 fiscal year, a 50,000,000 yen subsidy from the National Treasury, the same amount as the previous year, was appropriated to this legal aid business.

The total number of cases of application for legal aid during the period from the 1961 to the 1965 fiscal year was 10,224; the total number of cases in which the Association decided to give legal aid during the same period was 3,997, the percentage of the latter to the former being 39.1.

The cases in which the Association decided to give legal aid in the 1965 fiscal year may be broken down as follows: cases concerning money matters about 67.1 per cent; cases concerning immovable properties about 12.4 per cent; cases concerning personal status about 16.8 per cent; and other cases about 3.7 per cent. Of the cases concerning money matters, 80 per cent were cases of claim for damages due to traffic accidents.

4. *Trends of human rights problems*

The number of cases received in 1965 by the Civil Liberties Bureau of the Ministry of Justice was 6,984, herein including the cases dealt with by the Legal Affairs Bureaux, the District Legal Affairs Bureaux which are local organs of the Civil Liberties Bureau and the Civil Liberties Commissioners. The number was about the same as that of the previous year. Of the said cases, the number of those on infringement of human rights by public officials was 582 and by private persons 6,402, each of them being about the same as the previous year. Of the cases of infringement of human rights by private persons, the number of cases of "infringement of the safety of residence" and that of "coercion and oppression", both of which arose from disputes about daily life, was over 1,000 respectively. Cases of "exploitation and maltreatment between family members" and those of "infringement of honour, credit, etc." came next in number.

The number of cases of application for counselling concerning human rights received by civil liberties organs amounted to 189,988.

JORDAN

LAW No. 2 OF 5 JANUARY 1965 TO AMEND THE LABOUR CODE [1]

...

2. Section 1 of the principal Law shall be amended by replacing subsection (2) by the following:

"(2) Subject to the provisions of subsection (1) of section 5, the provisions of this Law shall apply to all workers and employers except:

"(*a*) government and municipal officials;

"(*b*) persons employed in agricultural work and irrigation;

"(*c*) domestic servants, gardeners, cooks and the like;

"(*d*) members of the family employed in family undertakings."

...

11. Section 15 of the principal Law shall be replaced by the following:

"15. (1) A contract of employment is an agreement, written or oral, explicit or implicit, whereby the worker undertakes to work for the employer under his supervision or direction in return for remuneration. The contract of employment may be for a specified period or of indefinite duration or for specified or unspecified work.

"(2) For the purpose of this Law, any person who works continuously until such time when the employer terminates his employment in pursuance of this Law shall be considered as a worker with a contract of employment of indefinite duration. In cases where the worker is employed for a specified period, he shall be considered as having worked continuously during that period irrespective of any days in which no work was assigned to him.

"(3) A worker who is employed regularly for piece work in the workplace or does a number of tasks by piece work shall be considered as a worker employed for an indefinite duration.

"(4) Where a contract of employment is entered into by a third party authorised to act on behalf of an employer, the latter shall be bound by the contract.

"(5) Where a contract of employment is entered into by a subcontractor who executes work on behalf of or for the benefit of the principal contractor, the principal contractor and the subcontractor shall be jointly liable for the discharge of the obligations imposed on them by this Law.

"(6) A contract of employment shall remain in force notwithstanding a change of employer, whether this is due to the transfer, sale or inheritance of the undertaking. The original employer and the new employer shall be jointly liable for a period of six months for the discharge of any obligations arising out of the contract that have matured before the date of the change. After the expiry of six months the new employer shall have sole liability.

"(7) The contract of employment shall be drawn up in writing in the Arabic language and in duplicate; each party shall retain a copy. If no such contract is made, the worker may establish his rights by all legal means of evidence.

"(8) The remuneration stipulated for the worker in the contract of employment shall not be less than the minimum remuneration applicable in his case."

12. Section 16 of the principal Law shall be amended by replacing subsections (1) and (2) by the following:

"(1) (*a*) The employer shall have the right to terminate, without giving either notice or compensation, a contract of employment of indefinite duration of any worker at any time during the first three months (considered as probation period) from the date of employment.

"(*b*) Subject to the provisions of section 17, the employer shall have the right to terminate, after the said probation period, the contract of employment of a worker, on account of the reorganisation of the undertaking, an increase in the number of workers, unsuitability for work or any other reason not prescribed by section 17. In the case of workers employed on an hourly, daily, weekly

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[1] *Al-jarida al-rasmiya,* No. 1818, of 18 January 1965. Translations of the Law into English and French have been published by the International Labour Office as *Legislative Series,* 1965 — Jor. 1. For a summary of the Labour Code, see *Yearbook on Human Rights for 1960,* p. 212.

or piece-work basis, the employer shall give a week's notice or remuneration in lieu thereof; and, in the case of workers employed on a monthly basis, one month's notice or remuneration in lieu thereof.

"(*c*) Calculation for the purposes of this section shall be made on the basis of the remuneration received by the worker in respect of the last month upon termination of his employment, in addition to all paid increases but excluding remuneration for overtime work. As regards a worker engaged in the place of employment on a piece-work basis, the remuneration shall be calculated on the basis of his earnings during the last two months of his employment.

"(*d*) If the employer terminates the worker's employment during the probation period but reinstates him within one month following the termination of his employment, his service shall be considered as continuous.

"(2) If the worker wishes to terminate his contract of employment of indefinite duration he shall give notice, in the same manner, within one week or one month; in case of omission he shall be obliged to pay compensation in lieu of notice."

13. Section 17 of the principal Law shall be replaced by the following:

"17. *Dismissal without notice or compensation.* In the following cases the employer may terminate a contract of employment of indefinite duration before the completion of the work for the purpose of which the contract was concluded or, as regards a contract of employment of a specific duration, before the end of the period prescribed in the contract or for a given task, without notice or compensation in lieu of notice and without payment of the indemnity provided for in section 19:

"(*a*) where the worker has exposed deliberately his life or the life of other workers to danger during the work or caused deliberately, considerable material damage to the products of the employer, his goods, tools or installations;

"(*b*) where the worker has committed a similar act and caused considerable damage to the products of the employer or his goods, tools or property through negligence on condition that he had been given notice in writing or orally before two or more witnesses;

"(*c*) where the worker deliberately or through negligence has omitted to transport any machinery or tool affecting the safety of workers to the place where they are kept with a view to protecting his safety and that of other workers in the undertaking or factory;

"(*d*) where he was found during the work under the effect of drugs taken without medical prescription or was found intoxicated;

"(*e*) where he was found in a prohibited area in the factory carrying sulphuric products or other inflammatory material or in any other place declared as dangerous;

"(*f*) where he was found guilty of a crime or vile misdemeanour, committed an assault or any vile immoral act with the employer or the director of the undertaking or any worker in the undertaking or committed any act against the employer or the director of the undertaking considered as an offence such as insult or contempt;

"(*g*) where he has disclosed the commercial, industrial, technical, or financial secrets of the employer;

"(*h*) where he has been absent without good cause for more than 15 days during any one year or for more than seven consecutive days: Provided that prior to dismissal the employer shall give the worker written notice by registered mail after ten days' absence (in the former case) or three days' absence (in the latter case); the despatch of the registered notice to the address of the worker shall be considered as sufficient evidence to justify the employer's action;

"(*i*) where he has continuously failed to observe orders relating to work which have been announced, and which were issued by the employer: Provided that he shall be given notice in writing on two occasions, or orally in the presence of two or more witnesses;

"(*j*) where the worker has assumed false identity or submitted false certificates;

"(*k*) where he has failed to observe the instructions given him. If the observance thereof is essential for the safety of workers and the work, and such non-observance violates the terms of employment: Provided that the employer shall give the worker opportunity to show cause against his dismissal without compensation."

...

KENYA[1]

THE KENYA CITIZENSHIP ORDINANCE, 1963

Ordinance No. 49 of 1963, assented to on 9 December 1963
and entered into force on 12 December 1963

PART II

CITIZENSHIP BY REGISTRATION

...

3. (1) Subject to the provisions of subsection (2), a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be registered as a citizen of Kenya if he satisfies the Minister:

(*a*) that he is of African descent;

(*b*) that either:

(i) he was born, and one of his parents was born, in a country to which this section applies; or

(ii) he has been resident for a period of not less than ten years in a country to which this section applies and he is not a citizen of an independent state on the Continent of Africa;

(*c*) that he is ordinarily resident in Kenya and has been so resident for a period of five years;

(*d*) that he has an adequate knowledge of the Swahili or the English language or such language as the Minister may prescribe;

(*e*) that he is of good character; and

(*f*) that he would be a suitable citizen of Kenya.

(2) A person shall not be registered as a citizen of Kenya under this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and to take an oath of allegiance in the form specified in the First Schedule.

(3) The Minister may, by order in the Gazette, made with the prior approval signified by resolution of the National Assembly, declare any countries to be countries to which this section applies.

4. (1) The Minister may cause the minor child of any citizen of Kenya to be registered as a citizen of Kenya upon application made in the prescribed manner by a parent or guardian of the child.

(2) The Minister may, in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Kenya.

5. A person registered as a citizen under section 3 or section 4 of this Ordinance shall become a citizen of Kenya by registration on the date on which he is registered:

Provided that where a person of full age who is registered as a citizen under this Ordinance fails to renounce the nationality or citizenship of any country other than Kenya and to take an oath of allegiance in the form specified in the First Schedule, and to provide evidence thereof to such person as the Minister may appoint in that behalf, within twenty-eight days of being so registered as a citizen, or such further time as the Minister or such appointed person may allow, his registration shall be cancelled and he shall be deemed never to have been so registered;

Provided further that where any person who, not being able to renounce his citizenship of some other country, is registered as a citizen of Kenya after making the declaration prescribed by section 11, and is, thereafter, able to renounce such first-mentioned citizenship, the Minister may require him to renounce such first-mentioned citizenship; and if such person fails to do so, within the period (not being less than twenty-eight days) specified by the Minister, his registration may be cancelled.

PART III

RENUNCIATION AND DEPRIVATION OF CITIZENSHIP

6. (1) If any citizen of Kenya of full age and capacity who is also:

(*a*) a citizen of any country to which section 9 of the Constitution applies, or of the Republic of Ireland, or

(*b*) a national of a foreign country,

makes a declaration in the prescribed manner of renunciation of citizenship of Kenya, the Minister may cause the declaration to be

[1] Texts of laws furnished by the Government of Kenya.

registered; and upon registration, that person shall cease to be a citizen of Kenya.

(2) The Minister may refuse to register any such declaration if it is made during any war in which Kenya may be engaged or if, in his opinion, it is otherwise contrary to public policy; but notwithstanding the refusal of the Minister, such person as aforesaid shall cease to be a citizen of Kenya at the time prescribed in section 12 of the Constitution.

7. (1) A citizen of Kenya who is deprived of his citizenship by an order of the Minister under section 8 of the Constitution shall, upon the making of the order, cease to be a citizen of Kenya.

(2) The renunciation by any person of his Kenya citizenship or the deprivation of any person's Kenya citizenship under the provisions of this Part shall not affect the liability of that person for any offence committed by him before the renunciation or deprivation of his citizenship.

PART IV

SUPPLEMENTAL

8. For the purposes of Parts II and III of this Ordinance, any woman who has been married shall be deemed to be of full age.

9. The Minister shall not be required to assign any reason for the grant or refusal of any application under this Ordinance and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

...

THE TRADE DISPUTES ACT, 1965

Act No. 15 of 1965, assented to on 4 June 1965
and entered into force on 8 June 1965

SUMMARY

Section 3 provides that this Act shall not apply to any person in respect of his employment or service—(*a*) in a military, naval or air force, or in any reserve force thereof; (*b*) in a police force, tribal police force, or prison service, or in the National Youth Service, or in any reserve force or service thereof.

Under section 4, any trade dispute, whether existing or apprehended, may be reported to the Minister by or on behalf of any party to the dispute. The Minister, by virtue of section 5, shall consider any trade dispute reported to him and shall for this purpose consult a Tripartite Committee consisting of his representative as the Committee's chairman and two other members appointed by him.

Sections 6 and 7 deal, respectively, with methods of conciliation to be used by the Minister in endeavouring to secure the settlement of trade disputes reported to him and the investigation by him of matters related to trade disputes.

Other provisions of the Act concern the reference of disputes for settlement or inquiry; the adherence to agreements and awards; and the collection of trade union dues.

KUWAIT

NOTE [1]

Kuwait's respect for and observance of international covenants, declarations or agreements concerning the different walks of life, have not been more conspicuously reflected than in her legislation and body of laws and regulations dealing with human rights and fundamental freedoms as set forth in the Universal Declaration of Human Rights adopted by the United Nations in 1948.

The fundamental freedoms of man, as recognized by the Universal Declaration, have unequivocally been guaranteed by the Constitution of the State of Kuwait. [2] While the Constitution affirmed the principles of justice, liberty and equality, it restricted the powers of the State relating to the legal process against individuals, lest such powers be abused.

The Constitution, which made it incumbent upon the State to maintain the safety and security of its people, and recognized the family as the fundamental unit of society, has also guarded against religious intolerance and racial or national prejudice. It guaranteed equality of opportunity to all members of the community without distinction. Confiscation of private property, deportation of citizens, deprivation of nationality, arbitrary arrest and undue prolongation of detention have all been justly dealt with and adequately ensured against.

Kuwait has entered into regional and international agreements governing working conditions and employer-employee relationships.

The representatives of the people of Kuwait have, since the inauguration of the Constituent Assembly in 1961 and the first National Assembly in 1963, directed sustained efforts by legislating for a fuller scale of human rights in line with the texts and provisions of the United Nations Universal Declaration of Human Rights.

Rules and regulations which are incompatible with human dignity or morality, or those fettering one's freedom, are not recognized by the State of Kuwait. State laws ban prostitution and slavery and urge adherence to Islamic institutions and values.

Liberal health and educational programmes, as well as a wide range of social services, have always had the best attention of the Kuwaiti legislator.

DEVELOPMENT OF LAWS UPHOLDING HUMAN RIGHTS

The preamble of the Constitution, promulgated on 11 November 1962, confirmed human dignity and freedom and declared its faith in the role of the country to serve the cause of peace and civilization. The Constitution laid the foundations of a genuine democratic government and of sovereignty of the people.

Ownership, capital and labour, have been considered by the Constitution as basic constituents with social functions for the State's social structure and national wealth. Personal liberties have been safeguarded by the adoption of appropriate legislation. The first penal code, issued on 2 June 1962, admitted of no crime or punishment except by law. Punishments, which were made personal only, could only be awarded as a result of acts committed subsequent to the enforcement of the relevant laws.

The law has stipulated the application of laws eliminating the nature of criminality in any act, and considered most favourable or benign to the accused, irrespective of whether such laws were issued prior to, or after the final verdict.

The law considers any person under eighteen a juvenile, and has specially provided a set of rules of corrective penalties for juvenile delinquents, derived from the latest theories and principles of criminology. The same law has absolved from penal responsibility any accused whose capability of realizing the nature or the illegal character of the act, or of controlling his own will, whilst committing the act, was proved lacking as a result of mental disease, deficiency or any other abnormality, or because of inebriety or narcotization, administered absentmindedly or under duress, or due to his inability to choose any other alternative, under the threat of the instant or imminent affliction of a serious injury to his body or property. Similarly, the accused shall not be held responsible for any act committed in self-defence or in defence of property should he have had no other alternative to avert danger.

Engaging in slave trade has been considered a crime by law, and a person who admits into or

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[1] Note furnished by the Government of Kuwait.

[2] For extracts from the Constitution of Kuwait of 11 November 1962, see *Yearbook on Human Rights for 1962*, pp. 171-172.

sends out of Kuwait territory anyone for slave trade purposes, is held liable for punishment. Purchasing, selling or offering as a "human gift" any human being is a crime punishable by law.

The law has considered the instigation and coercion of others by threat or guile, to commit acts of debauchery or prostitution, as criminal acts. The law has also considered criminal anyone who depends partially or totally for his living on the earnings of any person practising debauchery and prostitution.

The law of procedures and trials No. 17/1960 was issued in June 1960, with the safeguard of rights and liberties as its main objective. It has prevented the carrying out of punishment except after a judicial trial in accordance with the conditions and procedure provided for by law. The law has classified the courts and outlined the precautionary measures considered best in the interest of investigation, such as: arrest, detention, inspection of persons or living premises, and the confiscation of things. Such measures, while serving the interests of society, restrict only to the necessary limit the freedom of the citizens. The accused may decline to give a statement or answer questions upon interrogation, and is allowed to postpone investigations pending the attendance of his lawyer.

The accused is not required to take an oath, and the resort to any medium of coercion or inducement against him has been prohibited. He has been given the chance to defend himself and cross-examine the witnesses of the prosecution, or listen to the defence, when he pleases. He has also been permitted to conduct investigations in the manner he desires.

The law has made it the duty of the criminal courts to designate a counsellor to defend the accused in a criminal case if he failed to produce one himself, and a lawyer to the defendant in a case of misdemeanour, whilst it authorized the adversaries of the accused to assign any person present as their proxy.

When in custody, the accused appears before the court free of restrictions. The silence of the accused or his abstention from answering any question, shall not be construed as tantamount to confession of any sort, nor shall he be liable to punishment for any false statement given in self-defence.

The court must consider null, void, and valueless for the prosecution, statements or confessions of the accused if obtained under duress or torture.

The proven insanity, idiocy or mental disease, rendering the accused unable to defend himself, subsequent to the date of his committing the crime, shall be conducive to the suspension of legal process until such time as the accused recuperates. But if such a case was prior to or contemporaneous with the crime, a case that justifies the elimination of the penal responsibility, then the case can be proceeded with.

The law has forbidden the execution of an expectant mother sentenced to death, if she gives birth to a living baby. The court shall review the case for substituting a limited term of imprisonment for the death sentence.

The law has dealt with rehabilitation, and allowed the restoration of repute to the individual previously awarded punishment, provided certain conditions were met and subject to a judicial decision. The rehabilitation necessarily revokes the conviction's effect on the future of the accused, and wipes out its incriminatory effect.

Law No. 26/1962, dealing with the organization of prisons, has allotted one medical unit to each prison to care for the health of prisoners and their protection against pestilential diseases. Prisoners are only to carry out work commensurate with their physical ability. Prisoners with seriously deteriorating health, may be acquitted.

By law there should be one chaplain or more for each prison, to inculcate the prisoners the love for virtue, and to urge them to observe religious rites.

One sociologist and one or more psychiatrists shall be attached to every prison. A special committee must examine from a psychological and social point of view every criminal convict. This committee shall consider the treatment of prisoners, kind of work, and the proposed means of improvement, and shall submit a report on these aspects. This committee shall afford every possible assistance, before the prisoner's time of release, which would guarantee him the means of subsistence and keep him from returning to crime.

The prison administration has been entrusted with the prisoner's education. Every prisoner, if an affiliate member of an educational institute, shall be supplied with all the necessary books to enable him to pursue his studies, and shall be allowed to sit for the examinations in the premises of the institute, of which he is a member. The prison administration shall make available a library in each prison, complete with literary, scientific, and ethical books.

The Kuwaiti nationality law as revised by Law No. 2/1960, has dealt with the nationality of married women. A foreign woman may become a Kuwaiti citizen if married to a Kuwaiti, unless she expressed her desire to retain her original citizenship within one year of the marriage. A woman who acquires Kuwaiti nationality in the aforementioned manner, may not lose it if her marriage has come to an end, unless her original nationality was restored, or the citizenship of another country was acquired.

The nationality law states that a Kuwaiti woman married to a foreigner acquires her husband's nationality, provided the laws of the husband's country do not contradict such a ruling. She may otherwise retain her Kuwaiti citizenship.

EXAMPLES OF COURT DECISIONS TAKEN BY THE LAW COURTS OF KUWAIT WITHIN THE FRAMEWORK OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1. Pursuant to article 36 of the Constitution, guaranteeing to every person the right to express and propagate his opinion, verbally, in writing

or otherwise, the public prosecutor of the State of Kuwait turned down the under-mentioned cases filed against a number of journalists on charges of publishing news contravening press laws:

Case No.	*Charge against*
43/65	Editor-in-chief "Akhbar al Kuwait" (Daily)
108/65	Editor-in-chief "Al-Risalah" (Weekly)

2. The Constitution, article 166, guarantees the right of litigation to all. It guarantees to every person, even foreigners, the right to sue the State. In this context, Kuwait courts have taken decisions against the State in favour of the following foreign claimants:

Case No.	*Claimant*	*Respondent*
437/65 Commercial	Mousa I. Abu al Hassan	Ministry of Public Works
1467/65	The Gulf Co. for Mech. Works	Ministry of Justice

3. Article 120 of the law of procedure and criminal trials made it mandatory upon the court to assign a lawyer to defend the accused in a criminal case, if he failed to appoint one himself.

In implementing this principle, courts of Kuwait have given decisions relating to the assignment of lawyers to defend the accused in the cases stated below. What is worth while mentioning is the fact that all of the defendants were foreign residents.

Case No.	*Name of Appellant*	*Nationality*	*Accusation*
323/65	Said Nasser Moh'd	Omani	"Attentat à la Pudeur"
324/65	Shahi Jihan	Indian	"Attentat à la Pudeur"
326/65	Hassan Ali Sharaf Ed-din	Lebanese	Trading in Narcotics
339/65	Juma'a Aghati Badr	Iranian	"Attentat à la Pudeur"
395/65	Moh'd Ahmad Salah	Saudi	Trading in Narcotics

4. Human rights absolve from criminal responsibility any person who, due to mental disorder, retardation or abnormality, was unable to realize the character or illegality of the act he committed, or was incapable of directing his will. This has been recognized by article 22 of the Kuwaiti Penal Law. In exercising this right, the Public Prosecutor of Kuwait has turned down a murder case No. 176/64 against a certain Faisal A/Rahman, of Iraq, accusing him of premeditated murder. Medical examination proved a mental disease of which the accused complained thereby absolving him from responsibility.

It is a usual practice with Kuwait courts not to compel a wife to rejoin her husband against her wish. This is out of respect for her status and dignity as a woman.

5. Slavery is prohibited by Kuwait Law. Article 185 of the Penal Law states: Every person who admits into, or gets out of, the country a man for slave trade purposes, and every person who buys or offers for sale or as a present, any human being as a slave, shall be liable for a term of imprisonment not exceeding five years and a fine not exceeding five thousand rupees, or for either punishment.

In compliance with the provisions of this article, a certain Mohammed Ahmad Migdim, a Mahri citizen, was sentenced to six months' imprisonment and deportation. He was charged with bringing a boy into Kuwait for slave trade purposes.

LAOS

NOTE ON HUMAN RIGHTS [1]

There was only one innovation in this sphere but it was a very important one: the new code of penal procedure established by Legislative Order No. 237 of 12 August 1965, containing detailed provisions governing the conditions for detention during preliminary judicial investigation.

The general principles followed in the new code are:

(1) Detention pending trial must be a rare exception (article 126: "Detention pending trial is an exceptional measure. When it is ordered, the following rules shall be observed.").

(2) Extension of the detention, which shall not exceed two months, shall be accompanied by a statement of the grounds (article 128: "In cases other than those mentioned in the preceding article, detention pending trial may not exceed two months. After two months, if it seems necessary to continue the detention, the examining judge may extend it by an order with a special statement of the grounds, issued on the application of the *procureur du Roi,* which shall also be accompanied by a statement of the grounds. No one extension may be ordered for a period exceeding two months.")

(3) The surveillance exercised by the police is closely supervised by the *Ministère Public.* In particular, it is specified that after a period of twenty-four hours, the persons in custody must be examined by doctors (article 53: "If, for the purposes of the investigation, the officer of the criminal police has to hold one or more of the persons referred to in articles 51 and 52, he may not detain them for more than twenty-four hours.

"If there exists against a person serious and corroborative evidence giving grounds for his indictment, the officer of the criminal police shall bring the person before the *procureur du Roi* and may not hold him for more than twenty-four hours.

"The time-limit fixed in the preceding paragraph may be extended by a further twenty-four hours with the written authorization of the *procureur du Roi* or the examining judge.

"After twenty-four hours, a medical examination shall be made if the person in custody so requests and if there is a doctor within 20 km from the place of detention.

"The officer of the criminal police shall inform the person under surveillance of this right.

"When the surveillance is exercised more than 30 km from the place where the *procureur du Roi* officiates, the time-limits set in this article may be multiplied by five."

(*Article 54*: "Every officer of the criminal police shall note in the report on the examination of any person held under surveillance the duration of the sessions during which the person was subjected to questioning, the rest periods between the questioning sessions and the date and time when the person was either released or brought before the competent judge.

"This note shall be specially initialled by the persons concerned and, if they refuse to do so, this fact shall be mentioned. It shall give the grounds for the surveillance.

"It shall also be included in a special register kept for this purpose at any police station in which a person may be kept under surveillance.

"If he considers it necessary, the *procureur du Roi* may, even at the request of a member of the family of the person under surveillance, designate a doctor who shall examine that person at any time during the periods specified in article 53.")

[1] Taken from the Secretary-General's *Periodic Reports on Human Rights* (E/CN.4/892) of 30 December 1965.

LEBANON

NOTE [1]

Lebanon's attachment to democracy is expressed in its positive law, which safeguards the traditional freedoms and economic liberalism, displays increasing concern for genuine social justice, and thus more effectively protects human rights.

This note will show how the classical non-economic freedoms and the social rights are secured by Lebanese legislation (I) and jurisprudence (II).

I. LEGISLATION

1. The Government of Lebanon endeavours as part of its policy of social advancement to provide a decent living level for all persons. To prevent a price-wage spiral it gives preference to the social services but does not fail to readjust wages. Thus the provision of housing for the people is intended to prevent high rents from absorbing too large a part of the income of the least-privileged classes. Moreover, the spread of co-operatives enables sale prices to be lower than those of the open market.

Co-operatives are governed by Act No. 17.199 of 18 August 1964, which contains 74 articles. Each co-operative is a body corporate and must have a governing board supervised by a control committee and a general meeting.

To encourage the formation of co-operative associations the statute exempts them from municipal taxes, the chief direct taxes (on income, built-up land and transfer) and important indirect taxes and dues. It also provides for the formation of large co-operative unions capable of rendering services under the best conditions.

Since the prosperity of co-operatives depends on complete propriety of management, the statute contains detailed provisions concerning financial liability and penalties.

2. Also in its concern for social advancement, the Government of Lebanon has granted an exceptional increase in salary to all agents of the State (by Act No. 10 of 17 February 1965), and to official teachers who do not hold the teaching diploma of the Teachers' Training College, subject to their success in a course to be organized by decree (Act No. 11 of 17 February 1965). Act No. 33 of 11 June 1965 also grants a salary increase, by way of exception, to teachers in private schools.

In addition, Act No. 12 of 17 February 1965 raises the minimum wage to 145 Lebanese pounds (US $1 = £L3.25). This increase is granted to all employees without distinction of sex where women perform the same duties as men (article 1). Articles 2 and 3 set as the reference date 1 January 1960 and as the reference wage £L700; pay which on that date did not exceed £L700 is increased by 8 per cent and not less than £L15, and other rates of pay are increased by 7 per cent with a minimum of £L65 and a maximum of £L70. The employee may elect between the increases granted respectively by articles 1 and 2.

Employees engaged after the reference date receive one-quarter of the increase granted by either of those articles for each year following their entry on duty until December 1963 (article 3). Articles 4 and 5 contain special provisions relating to cost-of-living increases granted voluntarily by employers before the Act came into force. It is necessary to distinguish between establishments which have regulations of their own and those which have not. In the former, voluntary increases less than the statutory increases will be deducted from them, but those exceeding them will not be reduced. In establishments without regulations of their own, only increases over 20 per cent granted to all employees will be deemed to be cost-of-living increases. Where these two conditions are fulfilled, an increase equivalent to one-half that provided by the statute will be granted.

3. An enactment of 1 August 1964 (Decree No. 17.202) is intended to ensure that in future young persons shall be entitled to moral, intellectual and artistic advancement. For this purpose it establishes a permanent service to continue the training received by young persons at home, in school or in a professional institution.

4. In special relation to handicrafts, a national council for rural handicrafts has been set up by an enactment of 21 August 1964 (Decree No. 17.240, containing 22 articles). The purpose of his council stated in article 2 is to establish permanent and close co-operation between the Government and rural handicraft workers.

[1] Note prepared by Mr. Hassan-Tabet Rifaat, Doctor of Laws, Member of the Conseil d'Etat, Assistant Professor in the Faculty of Law and the Institute of Social Science, and government-appointed correspondent of the *Yearbook on Human Rights.*

This very general provision is amplified by article 8, which obliges the council to draw up a programme for raising the standard of handicraft work, and schemes likely to encourage handicraft associations and co-operatives suitable to the circumstances of rural handicraft workers; to make proposals concerning the conditions for grant of a quality stamp; and, more generally, to draft recommendations which will help the Government to carry out its policy for the benefit of rural handicraft workers.

The council is a mixed body, incorporated and financially autonomous. It is composed of civil servants, staff members of decentralized autonomous agencies (one official of rank not lower than that of chief of service, representing the Office of Social Development, is its chairman, and two officials of at least the eighth grade represent respectively the Ministry of Social Affairs and the Ministry of National Economy), and representatives of private associations and private persons (seven members elected by associations concerned with rural handicrafts, and six members appointed from among handicraft workers and experts). The private associations are to be designated and the election procedure laid down in a further decree.

5. Act No. 62 of 30 December 1964 governs private professional and technical instruction. The opening of a private professional teaching establishment must be authorized by a decree, but establishments existing when the Act enters into force enjoy an acquired right. Where a professional school is shown to have infringed a statute or regulation, its licence will be withdrawn by a decree made at the instance of the Minister of National Education after the director of technical and professional instructions has served a suspension order. Moreover, the Act empowers the Ministry of National Education to supervise civic, moral and physical education, sanitary conditions, protection of students against accident, and provision for their safety.

6. An enactment of one article (Decree No. 17.245 of 21 August 1964) empowers an administrator (*muhafiz*) to make within his region any order for the purpose of protecting public morality. Any infraction of such an order is punishable under article 770 of the Penal Code, which provides that "any breach of a regulation made by an administrative or municipal authority shall be punished by imprisonment or fine or both". An order made by an administrator is of course subject to review by a judge on the ground that it is *ultra vires*. Lebanon, it may be explained, contains five administrative regions called *muhafazat*, each under a civil officer called a *muhafiz*.

7. All press offences committed before 6 May 1965 against articles 56-64 of the Press Code of 14 September 1962 are granted amnesty by Act No. 37 of 24 June 1965. These articles relate to offences committed by the press against public morality, the private life of individuals, or generally against social and political ethics. (For a note by Mr. H.-T. Rifaat on this topic, see the *Yearbook on Human Rights for 1962*, pages 174-177.)

8. The number of private taxis plying for hire is governed by regulation. It was raised from 3,200 to 8,766 by Decree No. 1517 of 24 April 1965, giving effect to two enactments dated 23 August 1963 and 21 August 1964 respectively. The tax payable by owners of private vehicles desiring to register them as taxis (that is, to exchange their black plates for red ones) has been fixed at £L7.300 plus 3 per cent for administrative expenses.

9. For reasons connected with the security of the armed forces, Act No. 42 of 24 July 1965 establishes a preventive system of prior authorization for the printing and distribution of geographical maps of Lebanon. The Army Command grants the licence on an undertaking by the applicant that the map shall not give any indication concerning military positions. Offences against this Act are tried by a military court and are punishable by imprisonment varying from one month to one year. Power of seizure is given, but the Act does not clearly state to which authority. It merely lays down in its article 7 that maps shall be returned to their owners by order of the *parquet* if the judgement indicates that they do not contain anything contrary to the Act. The final provision of the Act lays down that it shall not apply to maps of scale 1/300,000 and below (i.e. 1/400,000, 1/500,000, etc.).

10. The Act of 16 February 1959 was passed soon after the internal events of 1958 in order to punish criminal acts effectively and thereby fully to reinstate the reign of law. It suspended provisionally the operation of articles 547 and 548 of the Penal Code, the former of which punishes any person wilfully causing the death of another with 15 to 20 years' hard labour, the latter with hard labour for life if the wilful homicide has been committed in certain well-defined circumstances (with malice, to derive gain from an offence, against an official in or because of the discharge of his duties, against a person under 15 years of age, or against two or more persons). Those articles have been provisionally replaced by provisions punishing wilful homicide with death, excepting, of course, acts done by members of the armed forces in or because of the discharge of their duties. *The judge is forbidden to take account of mitigating circumstances.*

Since nothing in the country's present situation justifies such a provision, the Emergency Act of February 1959 has been repealed by Act No. 26 of 18 May 1965 and the ordinary law, that of the Penal Code, 1943, is again in force.

11. The law of Lebanon has just been amplified by an enactment very closely affecting human rights. This was passed on 2 September 1964 and governs three institutions intimately connected with labour relations: collective agreements, mediation and arbitration.

(*a*) The institution of collective agreements (articles 1 to 28) is highly important in a market distinguished by peculiar conditions of engagement. The Act applies to them provisions designed to ensure in the interests of all the parties that they are fair. Thus an agreement is invalid

which in any of its provisions offends against the *ordre public*. Moreover, an agreement is only valid if signed by representatives of the workers duly authorized by at least 60 per cent of the affected employees and approved by a two-thirds majority of the general meeting, which is legally constituted only if half the members are present. Even so, the agreement does not become enforceable until it has been published in the Official Gazette at the instance of the Ministry of Social Affairs or one month has elapsed since its registration with that Ministry. It is then binding on all unions of employees or of employers which have signed it or have succeeded the original signatories, on all employees or employers affiliated to a union party to it (even if they withdraw from the union), and on all the employees of an institution subject to it even if they are not affiliated to any union or are bound to the institution by special contracts less favourable to them than the agreement.

Further, the Act provides that an agreement may be enforced even against non-signatory employees if it has been executed within one year and binds the majority of the affected employees. On application by a union or even of an employers' association, or of his own motion, the Minister of Social Affairs may extend the agreement by an order based on an opinion of the Collective Agreements Committee.

(*b*) Labour disputes, if collective, may give rise to mediation. If this fails, arbitration procedure must be commenced. The aim of mediation is to reconcile the views of the parties to the dispute, the employees and the employers. It may be requested by either party or by the Director-General of Social Affairs, and must be concluded very rapidly. By article 45 it must end in two weeks from the date of the first meeting unless the parties agree to extend it for a period which may not exceed one week. The mediator, who is the chief of the labour and professional relations service of the Department of Social Affairs, draws up a record of the parties' statements and the results of the mediation. If it is established that the parties have both been duly heard and the rights of the defence have been safeguarded, any total or partial agreement which the parties may reach binds them and constitutes an agreement enforceable against them.

(*c*) Where the parties cannot agree, arbitration procedure is commenced before a tribunal of nine members consisting of a chairman who must be a magistrate of at least the tenth grade, the Director-General of Social Affairs, the director-general of the ministry directly concerned with the professional sector of the parties to the dispute, three members appointed for three years to represent the employers and three others to represent the employees. The Act requires a quorum of six and a majority of five; in case of a tie the chairman has a casting vote. The tribunal must settle a dispute submitted to it within one month from the date of its first meeting; this period may be extended by two weeks.

The tribunal's award must be supported by reasons based on the applicable instruments (acts, regulations, collective agreements etc.), if the dispute turns on the interpretation of one of these. If, however, it is one which they do not govern, the tribunal must decide according to conscience. In either case its decision is final and enforceable and has the authority of a judgement. Note that article 47 of the Act prescribes that, where the dispute concerns staff of an agency under State supervision or of an institution administering a public service, arbitration procedure must be commenced immediately after mediation ends, before this tribunal and no other.

In other cases, however, arbitration may be commenced at any time by agreement (which must be notified to the Department of Social Affairs) between the parties to the dispute, or fifteen days after the collective stoppage of work. The dispute may be submitted either to the tribunal or to the arbitrator (or committee) designated in the collective or other agreement. The decision of a designated arbitrator has the same authority as that of the tribunal, but may be referred to the tribunal on appeal if the agreement expressly so provides.

In regard to the execution of awards, either of the tribunal or of a designated arbitrator, the Act prescribes that a party infringing a decision of a mediator or of the tribunal shall be imprisoned for two months to one year and fined not less than £L1,000 if an employee or £L10,000 if an employer. Note that article 105 of the Labour Code applies: this provides that the Administration may dissolve the council of a union which has broken its obligations but that another council must be elected three months after the dissolution; also that each member of the council may be prosecuted severally. (Concerning judicial interpretation of this provision, see below in *Jurisprudence*, paragraph 7.)

Employees who cease work unlawfully, that is before or during mediation, or during arbitration procedure, or in breach of an award of the mediator or tribunal, are not entitled to pay for the days of their strike.

II. JURISPRUDENCE

1. By limiting the list of acts of government, against which no appeal lies, the Conseil d'Etat extends its control over the actions of the Administration and thereby further protects the rights of the individual. Thus a decision not to assist with the armed forces the execution of a court's order is not an act of government. The Conseil d'Etat has declared its competence in this matter and has given judgement in its section of litigation against the Administration for substantial damages on the ground that non-execution of judgements against persons unlawfully occupying land belonging to the appellants had caused these considerable loss (C.E. No. 363, 17 March 1964, Rec.[2] 1964, page 110).

2. The Conseil d'Etat, by judging the regularity of municipal elections, appoints itself guar-

[2] The abbreviation "Rec." stands for the Administrative Series (*Receuil Administratif*) of reports edited by Maître Joseph Chidiac.

dian of the political rights of citizens. This duty is the more important since municipal electoral procedures arouse passions to a degree seldom exceeded by general elections. Thus in annulling elections the Conseil d'Etat founds itself mainly on entries in the initialled list, which is valid only where it conflicts with the statements in the record and with the check-sheets (C.E. No. 390, 20 March 1964, Rec., page 98).

3. In regard to general elections the Constitution provides that only the Chamber may judge the regularity of the election of its members. In regard to regularity of candidatures, the Conseil d'Etat is empowered to review orders of the Administration accepting or rejecting candidatures (C.E. No. 519, 20 April 1964, Rec., page 95). Thus it is sufficient if the candidate has given notice of candidature in good time and paid the statutory deposit (*ibid*).

Whereas in the preceding case an order of the Minister of the Interior was annulled as *ultra vires*, the Minister properly refused an application by a member of the governing board of the National Research Council who desired to stand for election, on the ground that the law forbade any person to sit both in Parliament and on the governing board of a public establishment. The High Administrative Tribunal held that the applicant's notice of candidature would have been valid only if he had resigned his seat on the board at least six months beforehand (C.E. No. 359, 13 March 1964, Rec., page 96).

4. An administrative tribunal is wholly incompetent to pass judgement on the validity of a patent for an invention, which is closely connected with the right of ownership and therefore within the jurisdiction of the ordinary courts, the guardians of private ownership (C.E. No. 715, 20 June 1964, Rec., page 182).

The same rule applies where the Administration causes damage to a building occupied by it and the owner claims compensation from the State (C.E. No. 794, 7 July 1964, Rec., page 191).

Nevertheless, an administrative tribunal is competent to decide a claim for compensation brought by an owner of land on which servitudes have been imposed for the benefit of broadcasting (C.E. No. 574, 29 April 1964, Rec., page 120).

5. A society wishing to be declared a public utility society must provide in its statutes or rules that it makes no charge for its services (C.E. No. 700, 18 June 1964, Rec., page 227).

6. The courts now regard freedom of trade and industry as a general principle of law. Two judgements of the Conseil d'Etat, a month apart, deal with this subject.

The first of these judgements annulled as *ultra vires*, an order by which the Minister of Public Works purported to regulate the manufacture of metal registration plates for motor cars by forbidding their manufacture by anyone who had not received the monopoly after a hearing. The Conseil d'Etat held that the Minister, by creating a *de facto* monopoly, had violated the principle of equality and restricted freedom of competition, thus distorting freedom of trade and industry in more than one respect (C.E. No. 860, 14 July 1964, Rec., page 228).

By an analogous judgement given in 1954 the Conseil d'Etat annulled an order of the Minister of Health, who by assuming the right to regulate the profession of optician had distorted the law on medical professions. The Conseil d'Etat held that "it was in no way within the competence of Ministers to make regulations limiting freedom of trade and industry" (C.E. No. 675, 30 December 1954, Ref. Jud. Lib. 1955, page 893). Moreover, ten years earlier a Lebanese court had declared that only the legislature may impose on private individuals obligations other than those that they themselves contract (C.E. 12 June 1945, Ref. Jud. Lib. 1946, page 132).

In the second case the Conseil d'Etat had to state the law relating to the profession of shipping agent. The facts were these. The United Nations Relief and Works Agency (UNRWA) was planning to send a shipment of merchandise by sea. The agent who was to forward it submitted an estimate which the Agency considered excessive. After obtaining information concerning the true cost from the head office of the firm, the Agency complained to the Administration, which at once withdrew the licence which it had granted to the shipping agent. On appeal by the agent the Conseil d'Etat annulled the Administration's order on the following grounds:

(*a*) No law provides that a licence is necessary to carry on the business of a shipping agency.

(*b*) Even supposing that a licence is necessary, no provision of law regulates its withdrawal.

(*c*) An application submitted to the Administration for a licence cannot create a duty to obtain a licence for which the law makes no provision (C.E. No. 910, 13 August 1964, Rec., page 229).

7. The enactments relating to trade unions are interpreted strictly. Thus only the executive committee may be dissolved by administrative order. The corporation itself may be dissolved only by an order of a court under articles 108 and 109 of the Penal Code (C.E. No. 175, 29 January 1963, Rec. 1964, page 59).

8. With regard to the civil service, the courts reconcile the general interest with that of civil servants. Thus the Administration must pay to an official who has been ordered to perform extra work the sum due to him even though the administrative order in virtue of which he has been instructed to perform that work has not been made in proper form, and though the expense of the extra duty has not been incurred. The Conseil d'Etat held felicitously that, if the contrary proposition were true, the Administration would benefit unlawfully to the detriment of an official who had not been charged either with fault or with fraud (C.E. No. 1399, 7 October 1965, Rec. 1965, page 242).

The law of Lebanon, however, bears strictly on striking by civil servants. Legislative Decree

No. 112 of 1959, which establishes and governs the civil service, forbids striking and incitement to strike in furtherance either of professional or of political aims. The Conseil d'Etat, in its judgement No. 1279 of 18 December 1962 (Rec. 1963, page 284) given under article 65 of the civil service statute just cited, held that " the feeling of fraternal solidarity with the strikers pleaded by the appellant in no way mitigated his act, nor could it prevent the Administration from deeming him to have resigned ".

Moreover, in a recent judgement the High Administrative Tribunal amplified its judicial disapproval of striking by officials. It ruled that a hunger strike conducted by an official of the aviation section was a means of exerting pressure on the Administration and was likely, by weakening him, to affect his work and prevent him from discharging his professional duties under the best conditions. The Conseil d'Etat therefore dismissed his appeal against the administrative order awarding him a disciplinary penalty, and held thereby that a hunger strike is a breach of discipline (C.E. No. 74, 15 January 1965, Rec. 1965, page 135).

9. Since expropriation restricts the right of private ownership, the Conseil d'Etat takes care that it shall only take place in strict accordance with law and with full regard to all the affected interests. Thus a tenant ordered to quit premises in virtue of an expropriation order has an *interest* entitling him to apply for reversal of the order on the ground that it was made only to benefit the owner by evicting the tenant. The Conseil d'Etat admitted that the tenant had an interest, but dismissed his appeal because there had been no collusion at all between the owner and the Administration (C.E. No. 1045, 31 October 1964, Rec. 1965, page 4).

A refusal by the Minister of the Interior of an appellant's application for the return to him of that part of an expropriated holding which after changes in the alignment was of no further use to the Administration was held bad as *ultra vires* (C.E. No. 67, 14 January 1965, Rec. 1965, page 67).

Where the Administration simultaneously expropriates land and imposes servitudes *non aedificandi,* it intends by the latter to reduce the amount of compensation due for the expropriation, which the imposition of the servitudes decreases considerably. The Conseil d'Etat described the conduct of the Administration as an abuse of procedure (C.E. No. 958, 25 May 1965, Rec. 1965, page 185).

10. Also in regard to private ownership, the Conseil d'Etat has had occasion to decide appeals submitted by individuals complaining of destructive behaviour by the United States troops who landed in Lebanon in 1958. It held, in a judgement given on 2 May 1962 (C.E. No. 177, Rec. 1962, page 95), that the damage caused to the appellant's motor omnibus by a lorry of the United States Army did not result from the operation of any Lebanese public service, and that " the Lebanese State cannot be held responsible for a wrongful act committed by any individual or corporation, official or private, passing through Lebanon or staying therein and not connected with the operation of a Lebanese public service ".

Nevertheless, in a judgement of 30 November 1965, the Conseil d'Etat followed a different line of argument and ruled that wrongful occupation by United States troops of land belonging to the appellants infringed the right of private ownership and constituted a trespass. It therefore declared itself incompetent to adjudicate on the claim for compensation, which came within the jurisdiction of the ordinary courts as " guardians of private ownership " (C.E. No. 1731, 30 November 1965, Rec. 1965, page 224).

11. The Press Code governs the appearance of newspapers by a preventive system of prior authorization by the Minister of Information. He must withdraw the licence of a newspaper ceasing to appear for a specified period (three consecutive months). Article 29 of the Code empowers the Minister to extend the period by a reasoned order after consulting with the journalists' association. The requirement of reasons postulates that the existence of a *lawful reason* negatives withdrawal. The Conseil d'Etat, in a judgment of 1964, expounds this concept of lawful reason, which is outlined in article 29 just cited and was expressly mentioned in the previous Act (Legislative Decree No. 4 of 1952).

The facts were these. The owner and manager of a newspaper was sentenced for participating in an unsuccessful attempt at a *coup d'état;* his newspaper was suspended for six months by order of a court which ordinarily tried press offences. (On this subject, see Mr. Rifaat's note in the *Yearbook* for 1962, cited above in the section *Legislation,* paragraph 7). The paper did not reappear in the statutory period immediately following the period of suspension. Was the Minister entitled to use the power of withdrawal given him by article 14 of the 1952 Code and article 29 of the present Code; or could the responsible owner-manager, who was in prison, plead his imprisonment as a " lawful reason "? In other words, the issue was whether imprisonment is a lawful reason within the meaning of the Code. The Conseil d'Etat ruled that it is not, and considered that " the appellant's imprisonment is not a lawful reason, since he is entitled to appoint a responsible manager in his place ", and that " he was bound, if he wished to continue to publish his paper, to bring it out again within the legal period " (C.E. No. 1044, 5 November 1964, Rec. 1965, page 20).

The argument of the Conseil d'Etat removes the burden of proof from the Administration and may be regarded as a shift of jurisprudence. In a judgement of 1957 the Council had held that " the file made no mention of any enquiry conducted by the Administration to ascertain whether the publication had ceased to appear for lawful reasons or not ". This practically exonerated the journalist from proving the existence of a lawful reason and prevented the non-appearance within the statutory period from

raising a presumption of law of the absence of lawful grounds, so that the Administration had itself to bring evidence of absence of lawful reason (C.E. No. 491, 15 October 1957, Rec. 1957, page 237).

12. By article 8 of the Constitution the State guarantees that "the personal status and religious interests of the populations, to whatever creed they belong, shall be respected". This guarantee meets the needs of Lebanese democracy, at least in its present form (see the *Yearbook* for 1961, pages 219-221, in which Mr. Rifaat outlined this aspect of the subject). These are the reasons for which the Conseil d'Etat dismissed the appeal of an agent of the Muslim *Waqfs* on the ground that the Muslim *Waqf* administration has complete independence in regard to the legal position of its agents. After linking this independence to the more general independence of the Muslim community in the management of its *Waqf* property, the High Administrative Tribunal declared itself incompetent and dismissed the appeal (C.E. No. 864, 14 July 1964, Rec. 1964, page 184).

Although the religious courts are competent in matters of personal status, the Court of Cassation remains the sole authority competent to rule on the validity of conflicting orders made by those courts. Thus it held that a marriage contracted by one S.S. before the Christian religious authorities, who do not recognize polygamy, was his only valid marriage, on the ground that a marriage he had contracted before the Muslim religious authorities had occurred later. In consequence the second marriage had not conferred Lebanese nationality on the appellant, who therefore resumed her original foreign nationality. She had applied for reversal of the Administration's order withdrawing her Lebanese nationality based until then on marriage (that is, on the second marriage of her spouse S.S.). On these grounds the Conseil d'Etat found the order of the Administration good and dismissed the appeal (C.E. No. 565, 28 April 1964, Rec. 1964, page 139).

LIBERIA

NOTE [1]

1. By Act of Legislature, passed and approved 25 January 1962, sections 221 through 224; 240 through 251 and 423 of the Aborigines Law, title 1, volume 1 of the Liberian Code of Law of 1956 were repealed. (See chapter VIII, page 7 of Acts passed during session 1961-1962.) [2]

2. By Act of Legislature, passed and approved 1 May 1963, chapter 40, sections 4100 through 4110; chapter 41, sections 4200 through 4203; chapter 42, sections 4300 through 4306; chapter 43, sections 4400 through 4408; chapter 44, sections 4500 through 4507 and chapter 45, sections 4600 through 4608 were passed amending the Labor Practices Law in relation to the rights and duties of labour organizations and their members. (See chapter XXXIII, pages 80-113 of the Acts passed 1962-1963.) [3]

3. Also, on 1 May 1963, an Act of Legislature was passed and approved (see session Laws of 1962-1963, chapter XXXIV, page 116), amending section 803 of chapter 9 of the Labor Practices Law with respect to weekly rest days and public holidays, as follows:

"Section 803. Payment for work on days of rest or public holidays:

"An employee who works on a public holiday, or on a day of the week on which he is regularly entitled to a day of rest, or on a public holiday falling on his regular day of rest, shall be paid at a rate not less than 50 per cent above the normal rate."

4. By Act of Legislature, passed and approved 1 May 1963, Session Laws of 1962-1963, chapter XXX, page 55, section 2501 of the Labor Practices Law was amended with respect to payment of retirement pensions to employees, as follows:

"Section 2501. Retirement Pension. — An employee within the application of this chapter is entitled to receive from his employer a retirement pension on retirement from an undertaking at the age of 60 and if such employee has completed at least fifteen years of continuous service, or he may retire at any age after he has completed twenty-five years of continuous service in such undertaking. The amount of pension paid annually to an employee shall be at least forty per cent of the average monthly earnings for the last five years immediately preceding his retirement. One-twelfth of such amount shall be paid each month from the time of retirement until the death of the employee."

5. By Act of Legislature, passed and approved 4 April 1963, 1962-1963 Session Laws, chapter XIX, page 29, the Government of Liberia took steps towards freedom of information as evidenced by the relevant portions of said Act quoted hereunder:

"Section 891. Director General. — 1. The Administrative Head of the Service shall be designated as Director General of the Liberian Information Service, hereinafter called the Director General. He shall be a Liberian citizen appointed by the President with the advice and consent of the Senate and shall be directly responsible to the Chief Executive for the total administration and co-ordination of the Government information and cultural program.

"2. The duties of the Director General shall include the following:

"(*a*) To select in accordance with prevailing policies, subjects of importance to be broadcast and/or covered by articles, features, news stories, releases, slides, films, filmstrips, postcards, calendars and other means, for distribution to the local and foreign media and or the local and foreign public;

"(*b*) To establish and maintain close contacts with all departments and agencies of the government, and national and private institutions and organizations for the purpose of gaining information and keeping the public informed of national programs, projects, and development;

"(*c*) To counter unfavourable propaganda by disseminating a wide range of informative material that presents a true and accurate picture of Liberia's aims and aspirations, policies, programs, institutions and progress to a worldwide audience;

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[1] Note furnished by the Government of Liberia.

[2] Acts passed by the Legislature of the Republic of Liberia during the session 1961-1962, published by Authority, Government Printing Office, Department of State, Monrovia, Liberia, 1963.

[3] Acts passed by the Legislature of the Republic of Liberia during the session 1962-1963, published by Authority, Government Printing Office, Department of State, Monrovia, Liberia, 1964.

"(*d*) To maintain contacts with the Liberian diplomatic and consular missions overseas and information centres in Liberia, and within the framework of this Chapter, plan, promote, co-ordinate, supervise and direct information programs and projects for these missions and centres in pursuance of Liberia's national and international objectives; "

6. Section 263 of the Penal Law as found in volume 5, Title 27, chapter 9 of the Liberian Code of Laws, making racial segregation and discrimination by any person, concessionaire, syndicate, corporation or firm a crime, is still in vogue.

7. Section 15, article I of the Constitution of Liberia, providing for liberty of the Press, still stands.

LIECHTENSTEIN

ACT OF 3 FEBRUARY 1965 AMENDING THE FAMILY ALLOWANCES ACT OF 6 JUNE 1957, AS AMENDED BY THE ACTS OF 30 JANUARY 1961, 30 JANUARY 1962 AND 28 DECEMBER 1963 [1]

Article 1

1. In the Family Allowances Act of 6 June 1957, as amended by the Acts of 30 January 1961, 30 January 1962 and 28 December 1963, the articles referred to below shall be amended to read as follows:

"*Article 3*

The following shall be entitled to family allowances:

(*a*) Employees gainfully employed by a contributory employer in a non-independent position;

(*b*) Employees residing in Liechtenstein who are not working as a result of illness or unemployment;

(*c*) Employees of Liechtenstein nationality residing in Liechtenstein who work for an employer outside the country and are not otherwise entitled to family allowances; if they receive lower family allowances abroad than in Liechtenstein, they may apply for the difference to the Liechtenstein Family Allowance Equalization Fund;

(*d*) Foreign frontier workers and seasonal workers, if their principal gainful occupation is in Liechtenstein."

"*Article 4*

Persons who are self-employed or are not gainfully employed or have independent income subject to income tax and who are required to contribute to the Liechtenstein Old-Age and Survivors' Insurance Fund, shall be entitled to family allowances."

...

"*Article 7*

1. Family allowances may be claimed for children in the following categories:

(*a*) Children born in wedlock;

(*b*) Step-children and adopted children;

(*c*) Illegitimate children;

(*d*) Foster-children who are accepted for permanent care and upbringing without remuneration.

2. Only one children's or birth allowance may be paid for any one child."

[1] *Liechtensteinisches Landesgesetzblatt*, No. 18 of 12 March 1965.

PUBLIC ASSISTANCE ACT OF 10 DECEMBER 1965 [2]

PART ONE

GENERAL PROVISIONS

Section 1

PURPOSE AND SCOPE

Article 1

1. The purpose of this Act is to ensure effective public assistance through relief and welfare work.

2. Relief shall be provided in the form of economic and personal assistance.

3. Welfare work shall include provident activities, measures to promote effective social work, and co-ordination of private and public welfare agencies.

Article 2

1. Economic assistance shall embrace needy persons who live in the country or for whose support Liechtenstein is responsible by statute or by treaty. It shall be such as to enable the needy to lead a decent existence.

2. Personal assistance shall in particular include family care and personal assistance for the needy, alcoholics, the mentally ill, persons in need of care and the infirm, old-age assistance,

[2] *Ibid.*, No. 3, of 1 February 1966.

and assistance to persons who are unemployed, homeless, dissolute or unwilling to work.

3. Assistance to youth care, protection, employment regulations and welfare is governed by separate legislation.

...

EMPLOYMENT IN FACTORIES ACT OF 21 DECEMBER 1965 [3]

I. GENERAL PROVISIONS

Article 1

SCOPE

1. This Act shall apply to any industrial undertaking having the characteristics of a factory.

2. An industrial undertaking may be designated a factory if it employs a majority of workers outside its housing area, whether on the premises of the undertaking or at work places belonging to it, or elsewhere on jobs connected with the operation of the undertaking.

...

Article 4

FACTORY HYGIENE AND PREVENTION OF ACCIDENTS

1. The factory owner shall install all such protective appliances for preventing illness and accidents as experience shows to be necessary and the state of technology and the particular circumstances show to be applicable.

...

II. WORKING-TIME

Article 36

NORMAL WORKING-WEEK

1. Working-time in a single-shift plant may not exceed forty-eight hours a week for any one worker.

2. If less than eight hours are worked on Saturday, and as a result the length of time worked would be less than that provided for in the preceding paragraph, the remainder of the forty-eight hours may be divided among the other working-days.

...

III. EMPLOYMENT OF WOMEN

Article 61

LIMITATION OF EMPLOYMENT. PROHIBITED WORK

1. Women shall not be assigned to work at night or on Sundays.

2. The Government shall designate those branches of industry and jobs in which women may not be employed at all.

...

IV. PRESENCE OR EMPLOYMENT OF YOUNG PERSONS

Article 66

MINIMUM AGE AND EMPLOYMENT OF YOUNG PERSONS

The presence or employment in workrooms of children under the age of fifteen years shall not be permitted. Exceptions may be approved by the authorities.

...

[3] *Ibid.*, No. 2, of 31 January 1966.

LUXEMBOURG

ACT OF 12 JUNE 1965 RESPECTING COLLECTIVE LABOUR AGREEMENTS [1]

1. A collective labour agreement is a contract respecting labour relations and general conditions of employment concluded between one or more industrial associations of wage earners or salaried employees, of the one part, and one or more industrial associations of employers, or a specific undertaking, or a group of undertakings carrying on the same type of production or activity, or all the undertakings in a certain industry, of the other part.

2. Only the industrial associations that are the most representative on the national scale may be parties to a collective labour agreement: Provided that individual employers or groups of employers may be parties to such an agreement.

All occupational groups having their own organisation and existing to represent their members and to defend the occupational interests and improve the living conditions of the latter shall be deemed to be industrial associations.

The most representative industrial associations shall be deemed to be those which are prominent by reason of their large membership, their activities and their independence.

Representatives of the industrial associations as well as employers or groups of employers may contract by virtue of provisions contained in by-laws, or by virtue of a special resolution of the industrial association or occupational group, or by virtue of authorisations in writing or otherwise clearly valid granted to them by the members of the association or group.

...

4. A collective labour agreement shall establish, *inter alia:*

(1) the status of the parties;

(2) the occupational and territorial scope of the agreement;

(3) the date of its coming into effect, its duration and the periods of notice of denunciation;

(4) the conditions of employment agreed by the parties.

The conditions of employment to be established shall include those relating to:

(*a*) the engagement and dismissal of the employed persons and suitable measures for their reception and introduction to work;

(*b*) hours of work;

(*c*) overtime and work on Sundays and on public holidays;

(*d*) weekly rest, annual holidays and public holidays;

(*e*) the elements of the wage applicable to each occupational category.

Every collective labour agreement shall contain provisions respecting:

(i) additional pay for night work; in undertakings where work is carried on continuously night work shall correspond to that done by the night shifts; additional pay for night work shall be not less than 15 per cent of the wage;

(ii) additional pay for arduous, dangerous or unhealthy work;

(iii) the method of applying the principle of equal remuneration without discrimination on grounds of sex.

Every collective labour agreement shall contain provisions respecting the adjustment of the amount of the remuneration in accordance with variations in the index number published by the Government. The methods applicable to the salaries and pensions of civil servants shall be applicable to the remuneration paid to staff in the private sector.

5. In each group of undertakings, each undertaking or each division of an undertaking, there shall be a single collective labour agreement for the entire staff of "manual workers" and a single collective labour agreement for the entire staff of "salaried employees".

The conditions of employment and remuneration of employees in the higher ranks shall not be governed by collective agreements concluded for the staff of "salaried employees".

...

8. A collective labour agreement shall be binding on all persons who have signed it themselves or whose authorised representative has signed it on their behalf. It shall also be binding on all persons who subsequently become a party to it or ratify it.

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[1] *Mémorial,* No. 35, of 2 July 1965. Text of Act in French and a translation into English have been published by the International Labour Office as *Legislative Series,* 1965—Lux. 1.

Where an employer is bound by the terms of a collective labour agreement, the said terms shall govern the labour relations and the conditions of employment of all members of his staff.

...

10. A collective labour agreement shall be valid for at least six months and at most three years from the date of its coming into effect, and may be denounced only if notice is given at most three months and at least 15 days before the date of its expiry.

In the absence of any provision to the contrary an agreement that has not been denounced shall be renewed as an agreement for an indefinite period, which may be denounced only if the notice laid down in it is observed.

Denunciation may apply to the whole agreement or only to certain of its provisions.

With a view to the drawing up of new provisions, the contracting parties shall commence negotiations six weeks before the expiry of the original agreement.

MALAWI

NOTE

The Government of Malawi has informed the Secretariat of the United Nations that the only inclusion in the *Yearbook on Human Rights* in respect of Malawi should be the text of Chapter II of the Constitution of Malawi which contains the Bill of Human Rights. [1]

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[1] For extracts from Chapter II of the Constitution of Malawi, see *Yearbook on Human Rights for 1964*, pp. 187-193.

MALAYSIA

THE VAGRANTS ACT, 1965

Act No. 19 of 1965, assented to on 18 January 1965 [1]

...

2. (1) Without prejudice to any other powers of the Minister, he may make arrangements under this Act for the reception, care and rehabilitation, in any premises which are by a notification in the *Gazette* designated by him for the purpose (in this Act referred to as a " Centre "), of destitute persons and of such persons as may be required in accordance with this Act to reside in a Centre.

...

3. (1) Subject to the provisions of this section, a person (whether destitute or not) may be required by order of a Magistrate to reside in a Centre, if that person is found begging in a public place in such a way as to cause or be likely to cause annoyance to persons frequenting the place or otherwise to create a nuisance.

...

4. (1) A police officer may arrest without warrant a person found begging as mentioned in sub-section (1) of section 3, and bring him or cause him to be brought before a Magistrate to be dealt with under that section.

(2) An inmate in a Centre who is absent from the Centre without lawful authority or excuse may be arrested by a police officer and be returned to the Centre or, if he cannot be returned to the Centre within twenty-four hours of his arrest, be brought before a Magistrate.

(3) Where a person arrested under sub-section (2) is brought before a Magistrate, the Magistrate may order that he shall be detained in custody until he can be returned to the Centre or may order that he shall be released on such conditions for securing his return to the Centre as the Magistrate thinks fit.

...

[1] *His Majesty's Government Gazette*, Vol. IX, No. 1, Act Supplement No. 2, of 21 January 1965.

THE MUSLIM COURTS (CRIMINAL JURISDICTION) ACT, 1965

Act of Parliament No. 23 of 1965, assented to on 31 March 1965 [2]

...

2. The Muslim Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the Muslim religion and in respect of any of the matters enumerated in List II of the State List of the Ninth Schedule to the Federal Constitution are hereby conferred jurisdiction in respect of offences against precepts of the Muslim religion by persons professing that religion which may be prescribed under any written law:

Provided that such jurisdiction shall not be exercised in respect of any offence punishable with imprisonment for a term exceeding six months or with any fine exceeding one thousand dollars or with both.

3. All offences under Muslim law which before the commencement of this Act had been tried by any of the Courts aforesaid shall be deemed to have been validly tried as if jurisdiction in respect thereof had been conferred on those Courts by Federal law.

...

[2] *Ibid.*, Vol. IX, No. 6, Act Supplement No. 3, of 1 April 1965.

MALDIVE ISLANDS

NOTE [1]

The Maldivian Constitution provides that legal arrests, detentions and exiles could be carried out only on the orders of the Minister of Home Affairs and/or the Minister of Public Safety.

The Constitution also lays down under the "Rights of the People" that every citizen has the right to appeal to higher authorities whenever he or she is in his or her opinion subjected to undue hardships or punishment.

The Constitution also grants the right of appeal to all persons, and under the same clause grants all citizens the right to engage certified lawyers for their defence in cases when he is charged or action is filed against him, or he files action against another, in the courts of the Maldive Islands.

According to the customs and laws prevailing here there are only two specified places where a person may be arrested and taken. One is the remand jail and the other the permanent jail where persons under sentences are taken. The latter is an island.

The arrested person has every right to inform his relatives or household. In fact, before he could take the long procedure of going through the official channels, the place of his detention is often known by his relatives because there is hardly anything done or movement made on the island which is unknown since the area of the island is hardly two square miles, and arrest of persons and their detention for normal offences is nothing that requires any secrecy. An arrested person may inform his parents, close relatives, wife or whomever is in the best position to look after his interests as he may think it best in his own interests.

Normally there is no demand to meet an arrested person because persons arrested are never normally kept under custody or in remand for more than a day or unless the offence involves large sums of money in which case he or she is held sometimes incommunicado pending investigations by the Public Safety Department and the Attorney-General's Office.

Visits to arrested persons or those kept under custody are allowed by administrative regulations, especially in normal cases where the person is not under any specified orders for crimes against the State and religion, when contact with others is not desirable in the interest of the investigation and as a form of punishment and in the interest of any further possible complications.

The frequency of visits, if any, would depend on the individual arrested and the visitors concerned. The authority for final decision always rests with the Minister concerned.

If it is the question of a legal counsel, his visits would of course be on a restricted but reasonable basis.

In case of illness the necessary medical attention is provided by the authorities concerned.

Normally the arrested person or the person held in custody, does not have the right to send or receive communications.

The Minister of Home Affairs or the Minister of Public Safety are the two persons on whom the authority of issuing orders for detention or remanding of a prisoner rest. And depending on the arrested person, the same two sources have the authority to determine the right to send or receive communications. There is no law on the subject except that the Minister, just as other members of the Cabinet, is answerable to the Parliament.

There has been no instance of a telephone being used by the arrested, detained or exiled persons. But there are numerous instances of communication being allowed, subject of course to censorship. They are either by letter or through messengers, who may be relatives or members of his or her own household.

The nature of the crime for the commission of which he is accused, and the interest of inquiries being made, the prevention of any acts of collusion, suppression of evidence or the escape of suspects, are all important aspects of the case of an arrested person on which the extent of his restriction is based. And in every case the Minister, under whose orders such arrests or detentions were imposed, uses his discretion in determining the restriction.

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[1] Note based upon information furnished by the Government of the Maldive Islands and published in the Secretary-General's *Periodic Reports on Human Rights* (E/CN.4/892) of 30 December 1965.

In all cases of arrests, detentions and exiles, while the discretion of the Home Minister and Public Safety Minister is to a great extent exercised in both ordering and determining the termination of such orders, he is subject to the Parliamentary queries on his activities and anyone may appeal to the Prime Minister for leniency or against undue hardships. The Prime Minister normally acts within a certain scope prescribed by written law and customary procedures.

MALI

INSTITUTIONS AND JUDICIAL OR QUASI-JUDICIAL PROCEDURES FOR THE PROTECTION AND DEVELOPMENT OF HUMAN RIGHTS IN THE REPUBLIC OF MALI [1]

CONSTITUTIONAL PROVISIONS

Preamble of the Constitution of Mali:

"The Republic of Mali solemnly reaffirms the rights and freedoms of man and of the citizen" proclaimed by the Universal Declaration of Human Rights of 10 December 1948.

It recognizes the right of all men to work and rest, the right to strike and the right to join trade-union organizations of their choice.

No one may be forced to work: The Republic of Mali has ratified Convention No. 105 concerning the prohibition of forced labour and article 3 (3) of Act No. 62-67/A.N.-R.M. of 9 August 1962 instituting a Labour Code in the Republic of Mali repeats the provisions of that Convention.

Article 1 of the Constitution ensures the equality of all persons before the law, and thereby excludes any discrimination between citizens of one and the same country.

Article 2 provides for equality under the electoral laws.

Article 4 states that any act of racial or ethnic discrimination and any regionalist propaganda which might threaten the security of the State or the territorial integrity of the Republic are prohibited by law.

ORGANIC ACTS

Act No. 62-67/A.N.-R.M. of 9 August 1962 instituting a Labour Code in the Republic of Mali:

Article 3: Prohibits forced labour.

Article 5: Provides penalties for violations of this prohibition.

Article 21: Grants absolute freedom to enter into contracts.

The preamble of the Constitution proclaims freedom of association. This provision is reproduced in the Labour Code, which defines the rights of collective bargaining in articles 59 and 281 *et seq.*

The right to strike and strike procedures are explained in articles 268 *et seq.*

Non-discrimination in the matter of wages is provided for in article 85: "For equal conditions of work and equal professional qualifications and output, equal wages shall be paid to all workers regardless of their origin, sex, age and status, as provided for in this chapter."

Non-discrimination in matters of employment is also guaranteed by the Labour Code.

MARRIAGE AND GUARDIANSHIP CODE

Act No. 62-17/A.N.-R.M. of 3 February 1962 on the Marriage and Guardianship Code:

Article 1 establishes the principle of freedom to marry, but with the consent of the marriage partner. No discrimination exists in this field, except where there are impediments to marriage.

Articles 44 *et seq.* establish the principle of freedom to choose the matrimonial property system.

CODE OF CIVIL, COMMERCIAL AND SOCIAL PROCEDURE

Act No. 101/A.N.-R.M. of 18 August 1961 establishes the principle of equality before Malian courts.

Legal remedies are open to all citizens without discrimination.

Act No. 103/A.N.-R.M. specifies the machinery for legal aid, which is equally available to all.

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[1] Information furnished by the Government of the Republic of Mali.

MALTA

THE MALTESE CITIZENSHIP ACT, 1965

Act No. XXX of 1965, assented to on 27 August 1965
Act deemed to have come into operation on 21 September 1964 [1]

PART I

PRELIMINARY

2. ...

(2) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) A person shall, for the purposes of this Act, be of full age if he has attained the age of eighteen years and of full capacity if he is not of unsound mind.

PART II

CITIZENSHIP BY REGISTRATION AND NATURALISATION

(a) *Registration*

3. (1) Subject to the provisions of subsection (4) of this section, a citizen of any country to which section 29 of the Constitution applies or of the Republic of Ireland or a British protected person, being a person of full age and capacity, on making an application therefor to the Minister in the prescribed manner, may be registered as a citizen of Malta if he satisfies the Minister—

(*a*) that he is ordinarily resident in Malta and has been so resident throughout the period of five years ending with the date of his application; and

(*b*) that he has an adequate knowledge of the Maltese or the English language; and

(*c*) that he is of good character; and

(*d*) that he would be a suitable citizen of Malta.

(2) Subject to the provisions of subsection (4) of this section, any person of full age and capacity born outside Malta whose father was at the time of that person's birth a citizen of Malta by virtue of the provisions of subsection (2) of section 23 or subsection (2) of section 26 of the Constitution may, on making application therefor to the Minister in the prescribed manner, be registered as a citizen of Malta.

(3) Subject to the provisions of subsection (4) of this section, any person of full age and capacity who—

(*a*) has emigrated from Malta (whether before, on or after the 21 September 1964) and, having been a citizen of Malta by virtue of section 23 (1) or 26 (1) of the Constitution, has ceased to be such a citizen or

(*b*) emigrated from Malta before the 21st September 1964 and, but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of section 23 (1) of the Constitution,

may, on making application therefor to the Minister in the prescribed manner, be registered as a citizen of Malta.

(4) A person shall not be registered as a citizen of Malta under the foregoing subsections of this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship he may possess and has taken an oath of allegiance in the form specified in the first Schedule to this Act.

(5) Subject to the provisions of subsections (6) and (7) of this section, a person shall be entitled, on making application to the Minister in the prescribed manner, to be registered as a citizen of Malta if he satisfies the Minister that he is and always has been stateless, and—

(*a*) that he was born in Malta, or

(*b*) that his father was a citizen of Malta at the date of his birth by virtue of the provisions of subsection (2) of section 23 or subsection (2) of section 26 of the Constitution or that his mother was at that date a citizen of Malta.

(6) A person referred to in paragraph (*a*) of subsection (5) of this section shall not be entitled to registration under the provisions of that subsection if the Minister is satisfied—

(*a*) that he has not been ordinarily resident in Malta throughout the period of five years ending with the date of the application; or

(*b*) that he has either been convicted in any country of an offence against the security of the

[1] *Supplement to the Malta Government Gazette*, No. 11,803, of 31 August 1965.

State or has been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than five years.

(7) A person referred to in paragraph (*b*) of subsection (5) of this section shall not be entitled to registration under the provisions of that subsection if the Minister is satisfied—

(*a*) that he has not been ordinarily resident in Malta throughout the period of three years ending with the date of his application; or

(*b*) that he has been convicted in any country of an offence against the security of the State.

4. (1) The Minister may cause the minor child of any citizen of Malta to be registered as a citizen of Malta upon application made in the prescribed manner by the person who according to law has authority over him.

(2) The Minister may, in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Malta.

5. (1) Subject to the provisions of subsection (2) of this section, a person registered as a citizen of Malta under section 24, 25 or 27 of the Constitution or under section 3 or 4 of this Act shall become a citizen of Malta by registration on the date on which he is registered.

(2) If a person of full age who is registered as a citizen of Malta under this Act other than subsection (5) of section 3 thereof does not produce to such officer as the Minister may designate in that behalf, within three months of being so registered or within such further period as the Minister or such officer may allow, evidence sufficient to satisfy such officer that he has renounced any other nationality or citizenship which he may have possessed, the registration of that person as a citizen of Malta shall be cancelled and he shall be deemed never to have been so registered.

(b) *Naturalisation*

6. (1) Subject to the provisions of this section—

(*a*) the Minister may, if application therefor has been made to him by any alien of full age and capacity who satisfies him that he is qualified under the provisions of the Second Schedule to this Act for naturalisation, grant to such alien a certificate of naturalisation; and

(*b*) the alien to whom such a certificate is granted shall become a citizen of Malta by naturalisation from the date of the grant.

(2) A certificate of naturalisation as a citizen of Malta shall not be granted to a person under this section unless and until he has made a declaration in writing in the prescribed form of his willingness to renounce any other nationality or citizenship which he may possess and has taken an oath of allegiance in the form specified in the First Schedule to this Act.

(3) If a person to whom a certificate of naturalisation as a citizen of Malta has been granted under this section does not produce to such officer as the Minister may designate in that behalf, within three months of being so registered or within such further period as the Minister or such officer may allow, evidence sufficient to satisfy such officer that he has renounced any other nationality or citizenship which he may have possessed, the naturalisation of that person as a citizen of Malta shall be cancelled and he shall be deemed never to have been so naturalised.

PART III

RENUNCIATION AND DEPRIVATION OF CITIZENSHIP

7. (1) If any citizen of Malta of full age and capacity who is also—

(*a*) a citizen of any country to which section 29 of the Constitution applies or of the Republic of Ireland; or

(*b*) a national of a foreign country,

makes a declaration in the prescribed manner of renunciation of citizenship of Malta, the Minister may cause the declaration to be registered; and upon registration, that person shall cease to be a citizen of Malta.

(2) The Minister may refuse to register any declaration of the kind mentioned in subsection (1) of this section if it is made during any war in which Malta may be engaged or if, in his opinion, it is otherwise contrary to public policy; but notwithstanding the refusal of the Minister, a person who makes any such declaration shall cease to be a citizen of Malta at the time prescribed in section 28 of the Constitution.

8. (1) Subject to the provisions of this section, the Minister may by order deprive of his Maltese citizenship any citizen of Malta who is such by registration or naturalisation if he is satisfied that the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact.

(2) Subject to the provisions of this section, the Minister may by order deprive of his Maltese citizenship any citizen of Malta who is such by naturalisation if he is satisfied that that citizen—

(*a*) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty or the Government of Malta; or

(*b*) has, during any war in which Malta was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) has, within seven years after becoming naturalised, been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than twelve months; or

(*d*) has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither—

(i) been at any time in the service of Her Majesty or of an international organisation

of which the Government of Malta was a member; nor

(ii) given notice in writing to the Minister of his intention to retain citizenship of Malta.

(3) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Malta and, in the case referred to in paragraph (c) of subsection (2) of this section, it appears to him that that person would not thereupon become stateless.

(4) Before making an order under this section, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this section; and if that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper.

(5) The Minister may make rules for the practice and procedure to be followed in connection with a committee of inquiry appointed under this section, and such rules may, in particular, provide for conferring on any such committee any powers, rights or privileges of any court, and for enabling any powers so conferred to be exercised by one or more members of the committee.

9. (1) A citizen of Malta who is deprived of his citizenship by an order of the Minister under section 8 of this Act shall, upon the making of the order, cease to be a citizen of Malta.

(2) The renunciation by any person of his Maltese citizenship or the deprivation of any person's Maltese citizenship under the provisions of this Part of this Act shall not affect the liability of that person for any offence committed by him before the renunciation or deprivation of his citizenship.

PART IV

SUPPLEMENTAL

10. For the purposes of Parts II and III of this Act, any woman who has been married shall be deemed to be of full age.

11. (1) Any reference in this Act to the father of a person shall, in relation to a person born out of wedlock and not legitimated, be construed as a reference to the mother of that person and, in relation to an adopted child whose adoption has been registered under the Civil Code, be construed as a reference to the adopter or, in the case of a joint adoption, the male adopter, and references to the parent of such person shall be construed accordingly.

(2) Where after the commencement of this Act a new-born infant is found abandoned in any place in Malta, that infant shall, unless the contrary is shown, be deemed to have been born in Malta.

12. Any reference in this Act to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before, and the birth occurs on or after the appointed day as defined in section 126 of the Constitution, the national status that the father would have had if he had died on the appointed day shall be deemed to be his national status at the time of his death.

13. The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

14. The Minister may in such cases as he thinks fit, on the application of any person with respect to whose citizenship of Malta a doubt exists, whether on a question of fact or law, certify that that person is a citizen of Malta; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

...

THE DOMESTIC WAGES COUNCIL ORDER, 1965

Entered into force on 12 January 1965 [2]

...

2. There shall be a Domestic Service Wages Council which shall operate for all employees in private households engaged in domestic duties, such as servants, maids, housekeepers, cooks, butlers, valets, cleaners, charwomen, washer-women, babysitters, nursemaids and other persons employed in related work.

...

[2] Published as Legislative Notice 1 of 1965 in *Malta, Subsidiary Legislation for the Year 1965*, Vol. XCVIII-Part II, printed by authority at the Government Press.

MAURITANIA

ACT No. 65.039 OF 12 FEBRUARY 1965 AMENDING ARTICLE 9 OF ACT No. 61.095 OF 20 MAY 1961 TO ENACT THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF MAURITANIA [1]

Art. 1. The provisions of article 9 of Act No. 61.095 of 20 May 1961 to enact the Constitution of the Islamic Republic of Mauritania are replaced by the following text:

"*Art. 9 (new).* The popular will shall be expressed through the democratically organized State Party.

"The Party of the Mauritanian People, born of the fusion of the national parties existing on 25 December 1961, is recognized as the sole party of the State."

...

[1] *Journal officiel de la République islamique de Mauritanie,* No. 155, 3 March 1965. For extracts from the 1961 Constitution of the Islamic Republic of Mauritania, see *Yearbook on Human Rights for 1961,* pp. 224 and 225.

ACT No. 65.123 OF 20 JULY 1965 TO REORGANIZE THE JUDICIAL SYSTEM [2]

Art. 1. In the territory of the Islamic Republic of Mauritania justice shall be dispensed in accordance with the provisions of this Act by the courts of the cadis, the courts of first instance, the labour courts, the military courts, a criminal court, a State security court and a supreme court.

...

Art. 4. Hearings in all courts shall be public, unless a public hearing would be prejudicial to law and order or to public morals, or is prohibited by law. In such cases, the president of the court shall direct that the proceedings shall take place *in camera.* In every case, except where otherwise expressly provided by law, the order or the judgement shall be given in public, and shall have effect only if accompanied by a statement of reason.

Art. 5. Justice shall be free, subject only to stamp duty and registration fees, the fees of judicial officers, the costs of the proceedings before trial and of the execution of the decisions of the court. Such costs shall be paid by the losing party; they shall be paid into court beforehand by the party for whose benefit they are to be incurred.

Legal aid may be granted by the court hearing the case to parties giving proof of indigence. The scope of such legal aid shall be governed by decree.

Art. 6. In neither a civil nor a criminal case may judgement be given against a person unless he has an opportunity to present his defence.

Defence advocates shall have audience in all civil and criminal courts.

Defence and the choice of defence counsel shall be free.

No person shall be removed from the jurisdiction of his lawful judges.

Consequently only a court appointed by law may pronounce a sentence.

Art. 7. Justice shall be dispensed in the name of the Mauritanian people. Warrants and the originals of orders, decisions, notarized contracts and other documents which may require enforcement shall bear the heading: "Islamic Republic of Mauritania"; "In the name of the Mauritanian people", and shall end as fellows: "Wherefore the Islamic Republic of Mauritania hereby instructs and orders all bailiffs and executing agents to enforce the said order (or the said decision, etc.), the *procureur general* or the *procureur de la République* to supervise, its enforcement, and all commanders and officers of the law enforcement services to lend their assistance if lawfully requested to do so. In witness whereof, this order (or decision, etc.) has been signed by...".

Enforcement shall be effected as laid down in the Code of Civil, Commercial and Administrative Procedure and in the Code of Criminal Procedure.

...

[2] *Ibid.,* No. 166/167 of 15 September 1965.

ACT No. 65.046 OF 23 FEBRUARY 1965 LAYING DOWN PENALTIES RELATING TO THE IMMIGRATION REGULATIONS [3]

Art. 1. The following shall be liable to a fine of from 10,000 to 300,000 francs and to imprisonment for a term of from two to six months, or to only one of these two penalties:

(1) Any person who enters or resides in Mauritania in violation of the immigration regulations;

(2) Any person who knowingly aids and abets another to enter or reside illegally in Mauritania;

(3) Any person who fails to comply with the health regulation in force;

(4) Any alien who fails to comply with the following orders and regulations:

Regulations prohibiting entry to or residence in certain specified zones or localities;

An order to leave such zones or localities, without prejudice to any deportation action which may be taken against an alien whose presence and activities are liable to disturb public order;

(5) Any alien who contravenes any of the provisions of the immigration regulations relating to the exercise of a profession.

Art. 2. The following shall be liable to imprisonment for a term of from three months to one year:

(1) Any person whose alien's registration card bears a false name;

(2) Any person who uses an alien's registration card issued in the name of another;

(3) Any person who lends, rents out or sells a genuine alien's registration card.

Art. 3. The following shall be liable to imprisonment for a term of from six months to two years:

(1) Any person who uses documents that are proved to be forged or altered in order to obtain a visa, a waiver of security, an extension of residence or a residence permit or who obtains such documents under an assumed identity or by furnishing false particulars of his civil status;

(2) Any person who forges a consular visa, a repatriation guarantee, a waiver of security, a work contract, or an alien's registration card;

(3) Any person who alters any such document which was originally genuine;

(4) Any person who uses any one of the above-mentioned forged or altered documents.

...

[3] *Ibid.*, No. 157/158, of 21 April 1965.

ACT No. 65.037 OF 11 FEBRUARY 1965 TO ESTABLISH AN OLD-AGE, INVALIDITY AND DEATH (SURVIVORS) PENSION SCHEME FOR WAGE EARNERS [4]

CHAPTER I

SCOPE

1. An old-age, invalidity and death (survivors) pension scheme for wage earners shall be established on the territory of the Islamic Republic of Mauritania. The management of this scheme shall be entrusted to the National Social Provident Fund, of which it shall constitute the pensions branch.

2. (1) This scheme shall apply to all workers covered by the provisions of the Labour Code, without any distinction as to race, nationality, sex, or origin, if they are employed as their principal means of livelihood on the national territory on account of one or more employers in the public or private sector, irrespective of the nature, form, or validity of the contract, or the nature and amount of their remuneration.

(2) This Act shall also apply to state employees and employees of public or local authorities and autonomous public bodies to which a particular pension scheme is not applicable in virtue of public regulations.

(3) Pupils of vocational schools, trainees and apprentices (including non-remunerated persons) may be placed on the same footing as the workers referred to in subsection (1) of this section.

(4) The special measures required for the application of the provisions of this Act to temporary or casual workers, trainees, apprentices and pupils of vocational schools shall be prescribed by the order of the Ministry of Labour.

3. (1) Every person who, after having been affiliated to the pension scheme for not less than six consecutive months, no longer fulfils the conditions as to coverage, shall be entitled to choose to remain voluntarily covered by the scheme, on condition that he makes an appli-

[4] *Journal officiel de la République islamique de Mauritanie*, No. 156, of 1 March 1965. Text of Act in French and a translation into English have been published by the International Labour Office as *Legislative Series*, 1965—Mau. 1.

cation to this effect within the six weeks following the date on which his compulsory affiliation comes to an end.

(2) The mode of application of the optional voluntary insurance prescribed in this section shall be laid down by decree adopted on a recommendation of the Governing Body of the National Social Welfare Fund.

...

CHAPTER III

BENEFITS

14. (1) Insured persons (male) who have attained the age of 60 years and insured persons (female) who have attained the age of 55 years shall be entitled to an old-age pension if they fulfil the following conditions:

(*a*) they have been a member of the Fund for at least 20 years;

(*b*) they have fulfilled at least 20 insurance months during the last ten years preceding the date of entitlement to pension;

(*c*) they have ceased all gainful activity.

(2) An insured person who has reached his fifty-fifth birthday (fiftieth birthday in the case of a woman) and is suffering from premature attrition of their physical or mental faculties rendering them incapable of exercising any gainful activity, and who furthermore fulfil the conditions laid down in the preceding subsection, shall be entitled to apply for an anticipated pension. The mode of finding or diagnosing, certifying and checking the said premature attrition of the organism shall be prescribed by order of the Minister of Labour.

(3) The old-age pension and the anticipated pension shall be payable as from the first day of the calendar month following the date on which the required conditions are fulfilled, on condition that the application for pension is submitted to the Fund within the six months following the said date. If the application for pension is made after the expiry of this period the pension shall be payable as from the first day of the calendar month following the date on which the application is received.

(4) An insured person who has completed at least 12 insurance months and who, having reached the age prescribed in sections (1) and (2) of this section, ceases all gainful activity but does not fulfil the conditions required for entitlement to an old-age pension, shall receive an old-age benefit payable in the form of a lump sum.

...

MEXICO

NOTE [1]

The legal measures which came into force in 1965 relating to the protection of the human rights recognized in the Universal Declaration of Human Rights are as follows:

Decree amending and supplementing article 18 of the Political Constitution of the United Mexican States relating to penal institutions. (Published in *Diario Oficial* of the Federation, 23 February 1965.) [2]

Decree amending articles 8, 63, 64, 94 and 95 of the Social Insurance Act, bringing farm workers under the social security system. (Published in *Diario Oficial* of the Federation, 31 December 1965.)

DECREE AMENDING AND SUPPLEMENTING ARTICLE 18 OF THE CONSTITUTION

Sole article. Article 18 of the Political Constitution of the United Mexican States is hereby amended and supplemented to read as follows:

"*Art. 18.* Only offences entailing corporal punishment shall be cause for precautionary custody. The place for this shall be distinct and entirely separate from that devoted to serving penalties for other offences.

"The Governments of the Federation and of the States shall organize the penal system in their respective territories on the basis of work, training for work and education as means to promote the social rehabilitation of the offender. Women shall serve their penalties in places separate from those in which men serve their penalties.

"The Governors of the States, subject to the provisions of their respective local laws, may sign general agreements with the Federation so that offenders convicted of offences under general law may serve their sentences in establishments coming under the authority of the Federal Executive.

"The Federation and the Governments of the States shall establish special institutions for the treatment of juvenile offenders."

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[1] Note furnished by the Government of Mexico.

[2] For the text of the Political Constitution of the United Mexican States of 5 February 1917, see *Yearbook on Human Rights for 1946*, pp. 189-202.

MONACO

ACT No. 789 OF 19 JULY 1965 CONCERNING THE REGULATION OF THE EMPLOYMENT OF PREGNANT WOMEN AND AMENDING LEGISLATIVE ORDINANCE No. 685 OF 19 FEBRUARY 1960 ESTABLISHING PERIODS OF REST TO BE GRANTED TO PREGNANT WOMEN[1]

Art. 1. The first and third paragraphs of article 2 of legislative ordinance No. 685 of 19 February 1960 are hereby amended as follows:

"*Art. 2, first paragraph.* Suspension of work by the woman for a period beginning eight weeks before the presumed date of confinement and ending eight weeks after the confinement may not, under penalty of damages to the woman, serve as a ground for severance of the employment contract by the employer.

"*Third paragraph.* Where the woman's absence, due to an illness which is medically certified to be the result of the pregnancy or birth and which makes it impossible for her to resume work, extends beyond the period of eight weeks following child-birth, but does not exceed this period by more than four weeks, the employer may not, under penalty of damages to the woman, dismiss her for such extended absence."

Art. 2. An article 2 *bis*, worded as follows, is hereby added to the above-mentioned legislative ordinance No. 685 of 19 February 1960:

"*Art. 2* bis. During the period extending from the date on which the employer receives the medical certification of the woman's pregnancy until the expiry of one month after the end of the maternity leave provided for in article 2 above, the employer may not dismiss the woman. This prohibition shall not apply in the case of serious misconduct on the part of the woman employee, the cessation or reduction of the undertaking's activity or the expiry of the employment contract.

"Any dismissal for one of the reasons mentioned in the preceding paragraph must be submitted for prior consideration by the Disemployment and Dismissals Commission established by article 8 of Act No. 629 of 17 July 1957."

Art. 3. An article 2 *ter*, worded as follows, is hereby added to the above-mentioned legislative ordinance No. 685 of 19 February 1960:

"*Art. 2* ter. During the legal duration of the maternity leave defined in article 2 above, the woman wage-earner shall retain her rights of seniority in the undertaking.

"Moreover, at the end of the said period of leave, she shall return to her former post or take up a similar post with at least equivalent pay."

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[1] *Journal de Monaco*, No. 5,626, of 23 July 1965. For extracts from legislative ordinance No. 685 of 19 February 1960, see the *Yearbook on Human Rights for 1960*, p. 241.

MOROCCO

ACT No. 4-64 OF 17 KADAH 1384 (20 MARCH 1965) CONCERNING THE ESTABLISHMENT OF A SPECIAL COURT OF JUSTICE FOR THE TRIAL OF CASES OF EXTORTION, CORRUPTION AND INFLUENCE-PEDDLING BY PUBLIC OFFICIALS [1]

...

Art. 1. There shall be established, at Rabat, for the whole of the Kingdom, a Special Court of Justice which shall take cognizance, to the exclusion of all other courts, of the crimes and offences specified in articles 30 to 36 inclusive of this Act and of crimes or offences inseparably or otherwise connected therewith.

The President of the Special Court of Justice may, however, at the request of the *Ministère public,* decide by ordinance that the Court shall meet at any other place within the territory of the Kingdom.

...

Art. 7. Subject to the provisions of this Act, the prosecution, investigation and judgement of cases brought before the Special Court of Justice shall conform to the rules of ordinary law.

Art. 8. Public proceedings shall be instituted before the Special Court of Justice by the *Ministère public* on the written order of the Minister of Justice. The *Ministère public* shall make an immediate application to the examining judge.

Art. 9. The examining judge may travel with a clerk to any part of the Kingdom for the purpose of carrying out any kind of investigation. He may issue letters rogatory to any judicial or police officials in any part of the territory of the Kingdom and may carry out or order any kind of search or seizure.

Art. 10. The examining judge shall ask the accused, at the latter's first appearance before him, to notify him, within twenty-four hours of the name of his counsel. Should the accused fail to do so, a counsel shall automatically be appointed for him by the examining judge.

Art. 11. The preliminary investigation shall be concluded within a period of six weeks at the most.

Art. 12. If the examining judge considers the accused guilty, he shall issue a transfer order and shall order the immediate transmission of the documents in the case and the articles produced in evidence to the *Ministère public.*

If the examining judge considers that the facts do not constitute one of the crimes or offences specified in articles 30 to 36 inclusive of this Act, or that the charges against the accused are inadequate, he shall dismiss the case or shall declare himself incompetent and transfer the documents of the investigation to the *Ministère public.*

In all cases, the *Ministère public* shall inform the Special Court of Justice.

Art. 13. The decisions rendered by the examining judge are not subject to appeal.

Art. 14. The warrants issued for the purpose of the investigation shall remain in effect until the Special Court of Justice has pronounced judgement.

Art. 15. The case shall be referred to the Special Court of Justice by means of a summons served directly on the accused by the *Ministère public* not later than fifteen days after the transmission of the documents by the examining judge.

Art. 16. The accused shall appear before the Special Court of Justice not less than forty-eight hours and not more than six days after the serving of the summons which shall define in legal terms the circumstances of the case.

The counsel may communicate freely with the accused and may examine the documents on the spot, without thereby giving rise to any delay in the course of the proceedings.

Art. 17. In the case of *flagrante delicto,* the *Ministère public* may, on the written orders of the Minister of Justice, with due cognizance of the preliminary investigation, and after the interrogation of the accused, who shall be placed under a committal order, bring the case before the Court within forty-eight hours, by means of a direct summons. The summons shall define in legal terms the circumstances of the case.

The accused shall be notified of the date and time set for his appearance before the Court. He shall also be asked to signify whether he intends to appoint a counsel and shall be informed that, if he does not intend to do so, a counsel will be automatically appointed for him by the President of the Court.

[1] *Bulletin officiel,* No. 2736, of 7 April 1965.

Art. 18. The Court shall be convened by the President for the day and the time set.

The hearing shall be public, but an order may be given for the case to be heard *in camera* if the Court considers it necessary.

In all instances, the final decision shall be pronounced in open court.

...

Art. 24. If the accused is pronounced guilty, the President shall raise the question as to whether there are any extenuating circumstances.

The Court shall then vote on the penalty to be imposed. Sentence may only be pronounced by a majority of the votes. However, after two votes in which no penalty has obtained a majority of the votes, the most severe penalty proposed in that vote shall be eliminated for the following vote, and so on, the most severe penalty being eliminated each time, until sentence can be pronounced by a majority of those voting.

...

Art. 28. Immediately after the Court's decision has been read out, the President shall advise the convicted person that he has five clear days in which to lodge an appeal with the Court of Cassation.

Art. 29. The decisions rendered by the Special Court of Justice may be challenged by recourse to the Court of Cassation for the reasons and under the conditions set forth in articles 586 *et seq.* of the Code of Criminal Procedure.

Art. 30. Any judicial or public official who misappropriates, squanders, improperly withholds or abstracts public or private funds, securities representing such funds, or documents, deeds, instruments or movable property which has been entrusted to him by virtue of or by reason of his office shall be liable to rigorous imprisonment for a term of ten to twenty years.

If the value of the articles misappropriated, squandered, withheld or abstracted is less than 2,000 dirhams, the offender shall be liable to rigorous imprisonment for a term of five to ten years.

Art. 31. Any judicial or public official who solicits, accepts, demands or orders payments which he knows are not due or are in excess of what is due either to the administration, or to the parties on whose behalf he is acting, or to himself, shall be guilty of extortion and shall be liable to rigorous imprisonment for a term of five to ten years and to a fine of 1,000 to 10,000 dirhams.

Art. 32. Any public official, who, either openly or covertly or through the intermediary of another, acquires or receives any advantage from transactions, adjudications, undertakings or management operations which are, at the time of the act in question, under his complete or partial administration or supervision, shall be liable to rigorous imprisonment for a term of five to ten years and to a fine of 5,000 to 50,000 dirhams.

Any public official who acquires any advantage from acts of payment or liquidation entrusted to him shall be liable to the same penalty.

Art. 33. Any person who solicits or accepts offers or promises or who solicits or receives gifts, considerations or other advantages in return for:

1. as a judicial or public official, performing or omitting to perform any act, whether proper or not, which lies within the scope of his duties but which is not subject to remuneration, or any act which, although outside the scope of his own duties, is or could be facilitated through his official position;

2. as a judge, sworn assessor or member of a court, rendering a decision for or against any party;

shall be guilty of corruption and shall be liable to a penalty of rigorous imprisonment for a term of five to ten years and a fine of 1,000 to 10,000 dirhams.

Art. 34. Any person who solicits or accepts offers or promises or who solicits or receives gifts, considerations or other advantages in return for attempting to procure or procuring decorations, medals, distinctions or rewards, positions, appointments or offices, or any favours granted by the public authorities, or markets, enterprises or other privileges deriving from agreements concluded with the public authorities or with an administration placed under the control of the public authorities, or, generally, any favourable decision from such an authority or administration and, by so doing, abuses his actual or presumed influence, shall be guilty of influence-peddling and shall be liable to rigorous imprisonment for a term of five to ten years and to a fine of 500 to 5,000 dirhams.

If the offender is a judicial or public official, the prescribed penalty shall be doubled.

Art. 35. Any person who, in order to secure the performance or non-performance of an act or of any of the favours or advantages specified in articles 33 and 34 above, has resorted to violence or threats, promises, offers, gifts or other considerations, or has yielded to solicitations tending towards corruption, even if he has not taken the initiative, and regardless of whether the constraint or corruption has produced an effect or not, shall be liable to the penalties prescribed in the said articles.

Art. 36. Any public official who, in the exercise of his functions, obtains knowledge of the commission of any of the offences mentioned in articles 30 to 35 inclusive above, shall bring it to the attention of the *Ministère public* of the Special Court of Justice without delay, under penalty of imprisonment for a term of one month to two years and a fine of 120 to 1,000 dirhams or either one of these two penalties.

Persons related to the offender by blood or by marriage, up to the fourth degree inclusively, shall be exempt from the provisions of the preceding paragraph.

...

MINISTRY OF JUSTICE ORDER No. 414-65 OF 29 JUNE 1965 CONCERNING THE USE OF THE ARABIC LANGUAGE IN THE COURTS OF THE REALM [2]

Art. 1. As from 1 July 1965, all written applications, statements of reply and conclusions submitted to the various courts must be drafted exclusively in the Arabic language.

Art. 2. Notwithstanding article 1, until 31 December 1965:

1. Counsel may submit, together with the aforesaid documents, a French or Spanish translation;

2. Records and reports drawn up by official clerks may, where the use of the Arabic language is not possible, be drafted and submitted in one of the foreign languages mentioned in the preceding paragraph.

...

[2] *Ibid.*, No. 2755, of 18 August 1965.

ROYAL DECREE No. 562-65 OF 17 SHABAN (11 DECEMBER 1965) PROMULGATING THE ACT AMENDING THE PROVISIONS OF ACT No. 4-64 OF 17 KADAH 1384 (20 MARCH 1965) CONCERNING THE ESTABLISHMENT OF A SPECIAL COURT OF JUSTICE FOR THE TRIAL OF CASES OF EXTORTION, CORRUPTION AND INFLUENCE-PEDDLING BY PUBLIC OFFICIALS [3]

Art. 1. Article 1 of the above-mentioned Act No. 4-64 of 17 Kadah 1384 (20 March 1965) is hereby amended and completed as follows:

"*Art. 1.* There shall be established, for the whole of the Kingdom, a Special Court of Justice which shall take cognizance, to the exclusion of all other courts, of the crimes and offences specified in articles 30 to 36 inclusive of this Act, provided that, when such offences involve a sum of money, advantages or favours, the value of that sum of money, those advantages or favours is equal to or more than 2,000 dirhams.

"The crimes or offences related to the crimes and offences specified in articles 30 to 36 inclusive shall also lie within the jurisdiction of the Special Court.

"The Court shall sit at Rabat; the President may, however, at the request of the *Ministère public*, decide by ordinance that the Court shall meet at any other place within the territory of the Kingdom."

Art. 2. The second paragraph of article 30 of the above-mentioned Act No. 4-64 of 17 Kadah 1384 (20 March 1965) is hereby repealed.

Art. 3. Cases currently before the Special Court of Justice which no longer come within the jurisdiction of that Court by reason of the application of article 1 of this Royal Decree shall be transferred forthwith to the court which is normally competent to try them.

...

[3] *Ibid.*, No. 2774, of 29 December 1965.

NETHERLANDS

NOTE [1]

A. LEGISLATION

1. Legal status of aliens

The Act of 13 January 1965 introducing new provisions concerning (*a*) the admission and expulsion of aliens; (*b*) surveillance of aliens during their stay in the Netherlands; and (*c*) frontier control, offers aliens seeking admittance to the Netherlands or residing there a much greater degree of legal protection than the Aliens' Act of 1845, which it replaced. An alien affected by an order involving a denial or revocation of a residence permit or expulsion may submit a request for review to the Minister of Justice and in a number of cases he may even appeal to the Crown.

2. Ratification of extradition conventions

On 21 April 1965 the Government submitted to the States-General a bill to approve the following Treaty and Conventions:

(*a*) The Treaty of Extradition and Mutual Aid in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands;

(*b*) The European Convention on Extradition;

(*c*) The European Convention on Mutual Assistance in Criminal Matters.

The Treaty and Conventions lay down that for political offences extradition or any other form of international legal assistance may not be requested. The European Convention on Extradition contains a similar provision as regards violations of criminal provisions of a discriminatory character.

3. New bill on extradition

A new bill on extradition to replace the present Act dating from 1875 was submitted to the States-General at the same time as the bill to approve the Treaty and Conventions mentioned under 2. The bill excludes the possibility of extradition where this would violate the principle *ne bis in idem*, e.g. because the person whose extradition has been requested has already been tried in the Netherlands on the matter to which the extradition request pertains. The bill also lays down that extradition shall not be authorized in cases where there are grounds for the assumption that the request was made with a view to prosecuting or punishing a person on account of his religious or political beliefs, his nationality, his race or the ethnic group to which he belongs. The bill does not permit extradition for political acts, unless express provision to the contrary is made in the relevant Convention.

The extradition procedure provided for in the bill offers a number of important legal safeguards for the person to be extradited. The application of the foreign State is transmitted to the courts, which decide whether extradition is admissible. The individual concerned may appeal to the Supreme Court against the courts' decision. Should the judge consider extradition inadmissible, the Government rejects the application; should the judge decide that extradition is admissible, the decision is at the Government's discretion. A person whose extradition has been requested may have the assistance of counsel during the proceedings. If he has no counsel to assist him the tribunal appoints someone to act as counsel. The procedure in applications for extradition is practically the same as in criminal matters. If an application for extradition is rejected, the court may grant the person whose extradition was requested a sum of money by way of compensation for the damage suffered.

4. Measures to ensure adequate standards of living

On 1 January 1965 the General Social Assistance Act went into effect. This Act is based on the principle that the provision of purely financial assistance available to needy persons on request is a responsibility and a duty of the public authorities. The obligation to provide for his own needs still rests primarily on the individual. The purpose of public assistance is to complement official wage, labour and social security policies.

This Act, whose function, it must be made clear, is purely complementary, guarantees every member of the Netherlands community the right to financial aid covering the "indispensable means of subsistence" for himself and his family,

[1] Note communicated by the Netherlands Government.

to the extent that he cannot provide them by his own efforts. These means of "subsistence" include food, clothing, furniture and heating and, if necessary, medical expenses and home or institutional care.

5. Public health

(a) *The Hospital Charges Act*

This Act, which entered into effect on 1 June 1965, deals with the establishment of hospital charges. It provides that hospital charges must be approved by a central organ in which hospital organizations, health insurance funds and other interested parties, for example health insurance underwriters, are represented.

(b) *The Health Insurance Funds Act*

This Act, which went into effect on 1 January 1966, replaced the various regulations relating to health insurance funds by new legal provisions. The Act made various improvements in the organization of such funds; for example, rules are laid down concerning the right of administrative appeal (in the case of compulsory insurance), the harmonization of voluntary and compulsory insurance benefits, and the right to voluntary insurance of persons not covered by compulsory insurance but in receipt of incomes below the qualifying limit for voluntary insurance. The composition of the Health Insurance Board has been modified so as to strengthen the influence of employers' and workers' organizations.

B. ADMINISTRATIVE MEASURES

Freedom of opinion and expression

The Royal Decrees of 11 November 1965 introduced provisional regulations for radio and television. Any non-commercial organization fulfilling certain conditions is in principle authorized to broadcast radio and television programmes. The allotment of broadcasting time is determined by the Minister for Cultural Affairs, Recreation and Social Action, according to rules established by these decrees. The supervision of broadcasts is repressive. There is therefore no preliminary censorship. Although broadcasting possibilities are reduced, the broadest possible freedom of the airwaves is assured by this regulation.

C. JURISPRUDENCE

Freedom of opinion and expression
(Supreme Court decisions of 25 June 1965)

A number of associations of broadcasters sued a company which publishes a weekly giving details of radio programmes for breach of copyright. The company cited article 10 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms, pleading that to treat the radio programmes as subject to copyright would be incompatible with the freedom (guaranteed in that article) of the company and/or the weekly's readers to receive and impart information. The Supreme Court rejected that plea, ruling that the information which, under article 10, everyone was free to receive and impart without interference by public authority and regardless of frontiers, could not be deemed to include complete weekly radio programmes.

The company counter-petitioned the Court to order associations of broadcasters to make their radio programmes available to it immediately and on every occasion. In support of its petition it cited article 10 of the Rome Convention, contending that the associations were bound to permit the company to exercise the freedom defined in that article. The Supreme Court held that no obligation to impart information to third parties could be inferred from article 10 of the Rome Convention, and that the public authorities and other artificial and natural persons were free, except in a few instances which did not apply in the present case, to choose whether or not to communicate what they had knowledge of. The company's second appeal to article 10 of the Rome Convention was thus equally unsuccessful in bringing about a decision in its favour.

NETHERLANDS ANTILLES

1. Right to security in case of widowhood

The Territorial Ordinance concerning general insurance for widows and orphans which was adopted on 21 December 1965 and entered into effect on 1 January 1966 establishes a system of general compulsory insurance for widows and orphans applicable to the entire population of the Netherlands Antilles. Here are its essential points:

1. As a general rule, the widow of a man who, under the Ordinance, is covered by compulsory insurance, is entitled up to the age of sixty-five to a widow's pension guaranteed by the public authorities;

2. Benefits vary with the age of the beneficiary; an elderly widow receives more than a young widow;

3. With a few exceptions, all residents of the Netherlands Antilles who have reached the age of fifteen are covered by insurance;

4. Pensions are financed by premiums paid by insured persons under sixty-five years of age, which are calculated on the basis of income.

2. Right to fair and satisfactory remuneration

In 1965 the public authorities promulgated general territorial decrees fixing minimum wage rates for certain categories of wage-earners, these rates being determined for a period of not more than one year. In the course of the year covered by this report, minimum rates were fixed for male and female shop assistants in Curaçao and Aruba, bakers in Curaçao and persons who had received elementary technical training in Aruba.

NEW ZEALAND

NOTE [1]

I. LEGISLATION

1. *Property Law Amendment Act 1965*

In dispositions of property, the Act renders void provisions which prohibit or restrict the transfer, assignment, letting, subletting, charging or parting with the property, to any person on the grounds of his colour, race or ethnic or national origins.

2. *Adoption Amendment Act 1965*

This Act gives a right of appeal in respect of certain decisions on adoption applications. These are:

(*a*) a refusal to make an order;

(*b*) a refusal to make an order dispensing with the consent of any parent, guardian or spouse; and

(*c*) revocation of an interim order or a refusal to revoke such an order.

3. *Extradition Act 1965*

This Act replaces United Kingdom legislation on extradition which was previously in force in New Zealand. The Act deals with extradition of offenders from New Zealand to a foreign country.

4. *Judicature Amendment Act 1965*

This Act gives power to the Supreme Court to impose restrictions on the instituting of legal proceedings by any person who is proved to the satisfaction of the Court to have persistently and without any reasonable ground instituted vexatious proceedings.

5. *News Media Ownership Act 1965*

This Act prevents a Company incorporated outside New Zealand from establishing or operating a private broadcasting station, or publishing a newspaper, inside New Zealand.

II. COURT DECISIONS

Morgan v. *Attorney-General* (1965) N.Z.L.R. p. 134 Supreme Court.

Liability of Crown for injury caused to prisoner in penal institution through negligence of officer of such institution — Extent of duty of care owed to such a prisoner.

Held A prisoner in a penal institution is not an employee of the Prisons Department and accordingly the Department owes no duty to him of providing safe equipment as an employer. Nevertheless the Superintendent and each of his officers *owe a duty to each prisoner to take reasonable care for his safety during his detention* limited to using reasonable care not to allot him work nor to give him orders which they could reasonably foresee would cause harm to him.

Hall v. *Commissioner of Inland Revenue* (1965) N.Z.L.R. p. 184 Supreme Court.

Criminal Law — Prosecution making out a *prima facie* case — Facts proved consistent with guilt or innocence — Whether defendant called on for an answer.

Held In a criminal proceeding it is not sufficient for the prosecutor to establish a *prima facie* case. If such a case simply shows a state of affairs which is consistent with guilt and is also consistent with innocence *no onus is cast on defendant to explain away the appearance of guilt*. It is only where the *prima facie* case points overwhelmingly to guilt (as in the case of possession of recently stolen property) that an adverse inference may legitimately be drawn from the defendant's silence.

R. v. *Hammond* (1965) N.Z.L.R. p. 257 Supreme Court.

The test to be applied in terms of s.20 of the Evidence Act 1908 in judging the admissibility of a confession obtained by a promise or inducement is whether or not an innocent person in the position of the accused and in the circumstances in which he was placed would be likely to confess to a crime which he had not committed. *The judge is not entitled to have regard to any view he may have formed as to whether the admission actually made was true* but must restrict himself to the consideration of the tendency or otherwise of the accused, assuming him to be innocent, to admit guilt.

Re M. (1965) N.Z.L.R. p. 286 Supreme Court.

Prodigality, improvidence, business incompetence, facility of will, or excessive generosity, unless due to age, disease, illness, physical or mental infirmity or taking or using in excess alcoholic liquors or any intoxicating, stimulating, narcotic or sedative drug, *can never give jurisdiction to make a protection order* under the

[1] Note furnished by the Government of New Zealand.

Aged and Infirm Persons Protection Act 1912. (This is the first judicial decision on the general policy of the Act.)

The Queen v. *C* (1965) N.Z.L.R. p. 366 Supreme Court; (1965) N.Z.L.R. p. 825 Court of Appeal.

Child charged with indictable offence triable summarily — Whether child has right to elect trial by jury — Whether such right defeated on committal to care of Superintendent of Child Welfare.

Case Stated for the opinion of the Supreme Court which raised the important question whether a child, within the meaning of the Child Welfare Act, is entitled to elect trial by jury for an indictable offence triable summarily and, more importantly, whether that right of election, if available, can be defeated.

Held A child charged before a Children's Court with an indictable offence triable summarily has a right to elect trial by jury under s.66 (1) of the Summary Proceedings Act 1957, but such election becomes operative only if the Court does not exercise in whole or in part the special authority conferred on it by s.31 of the Child Welfare Act 1925.

Jennings v. *Police* (1965) N.Z.L.R. p. 382 Supreme Court.

Magistrate seeking information from police officer in absence of accused — Whether sentence can stand.

Held If before passing sentence the Magistrate seeks information regarding the case from a police officer in the absence of the accused the sentence imposed cannot stand even though the information obtained is shown to be quite innocuous.

Police v. *Bonner and Robinson* (1965) unreported, Magistrates' Court, Christchurch.

Prosecution under s.199 of the Sale of Liquor Act 1962—Licensee and manager of licensed hotel refusing to serve a Maori woman because she was a Maori—Convicted and fined.

Held The section was intended to safeguard the rights of the individual and it cannot be pleaded that one particular Maori was refused service because Maoris generally are undesirable persons, even if so broad a proposition could be shown to be true. It would have to be shown that this particular Maori was undesirable, and that the reasons why he or she was undesirable were reasons other than those excluded by s.199.

NIGER

ACT No. 65-004 OF 8 FEBRUARY 1965 TO ESTABLISH A "NATIONAL SOCIAL SECURITY FUND" [1]

Art. 1. A National Social Security Fund is hereby established to administer the social welfare schemes inaugurated for the wage-earners referred to in article 1 of the Labour Code.

Art. 2. The National Social Security Fund shall be a State institution, with the status of a body corporate and financial autonomy.

It shall be responsible to the President of the Republic or a minister delegated by him.

Art. 3. The social welfare schemes administered by the Fund shall be as follows:

...

Art. 9. The Fund's assets shall consist of the following:

(1) Contributions payable by employers or wage-earners;

(2) Contributions, advances, rebates and subsidies from the national budget;

(3) Income from investments;

(4) Gifts and bequests.

Art. 10. The Fund's expenditure shall comprise:

(1) The technical expenses of each scheme;

(2) Operational and investment expenditure;

(3) Expenditure on the implementation of the health, social and family welfare programme and the programme for the prevention of industrial accidents and occupational diseases;

(4) Repayment of the advances made from the national budget.

...

[1] *Journal officiel de la République du Niger*, No. 4, of 15 February 1965.

ACT No. 65-034 OF 7 SEPTEMBER 1965 AMENDING ARTICLE 10 AND ARTICLE 29, PARAGRAPH 2, OF THE CONSTITUTION [2]

Art. 1. Article 10 and article 29, paragraph 2, of the Constitution of 8 November 1960 shall be amended as follows:

Art. 10. "The President of the Republic shall be elected by absolute majority in the first ballot. If an absolute majority is not obtained, the President of the Republic shall be elected by relative majority in the second ballot, which shall take place fifteen days after the first ballot.

"The election shall be proclaimed by decree of the Council of Ministers.

"The first ballot for the election of the President of the Republic shall take place not less than thirty and not more than forty days before the date on which the term of the incumbent President expires.

"The term of office of the President elect shall begin on the date on which the term of his predecessor expires.

"The conditions governing eligibility, nominations, polling procedure, the counting of votes and the announcement of results shall be prescribed by law. The Supreme Court shall ensure that these operations conform to the law."

Art. 29. para. 2.

"The term of office of the legislature shall be five years. General elections for the formation of a new Assembly shall be held not less than ten and not more than twenty-four days before the term of the incumbent Assembly expires."

...

[2] *Ibid.*, No. 18, of 15 September 1965. For extracts from the Constitution of Niger of 8 November 1960, see *Yearbook on Human Rights for 1960*, pp. 249-250.

ACT No. 65-035 OF 7 SEPTEMBER 1965 CONCERNING THE ELECTION OF THE PRESIDENT OF THE REPUBLIC[3]

Chapter I

ELIGIBILITY

Art. 1. Candidates for the Presidency of the Republic must satisfy the following condition:

(1) Be of Niger nationality and have been born in the Niger of Niger parents;

(2) Be domiciled in the Niger;

(3) Be not less than forty-one years of age on voting day;

(4) Be duly inscribed in the electoral register;

(5) Enjoy civil and political rights.

Art. 2. The following shall not be eligible for the Presidency of the Republic:

(1) persons deprived of their electoral rights by a judicial decision under the laws governing such deprivation;

(2) persons deprived of their legal capacity and persons disqualified from managing their own affairs.

...

Chapter IV

ELECTORAL PROPAGANDA

Art. 13. The opening date for the electoral campaign shall be set by decree of the Council of Ministers.

Art. 14. The electoral campaign shall be conducted at public meetings, in the press, and by means of hand-bills and posters; radio broadcasts may also be used.

The conditions governing the candidates' use of the means allotted to them to conduct their campaigns shall be established in an order by the Minister of the Interior.

Chapter V

VOTING

Art. 15. The voting operations, the opening of the ballots and the counting of votes may be supervised in the polling stations by representatives from each of the political parties putting forward a candidate.

Such representatives must be duly inscribed in the electoral roll of the polling station in which they exercise such supervision.

...

Chapter VI

SETTLEMENT OF ELECTORAL DISPUTES

Art. 24. The eligibility of a candidate may be contested before the Supreme Court in a written petition addressed to the President of the Supreme Court within twenty-four hours following the publication of the list of candidates.

Motions alleging irregularity in the voting or in the counting of votes shall be made in the same manner and within the same time-limit.

The Supreme Court shall render judgement within eight days of receipt of the motion.

Where it is established that there have been serious irregularities likely to affect the result of the voting as a whole, the Court shall declare the election void.

A second vote shall then be ordered by a decree of the Council of Ministers. That vote shall take place in the course of the month following the decision of the Supreme Court.

...

[3] *Ibid.*

ACT No. 65-036 OF 7 SEPTEMBER 1965 CONCERNING THE ELECTION OF DEPUTIES TO THE NATIONAL ASSEMBLY[4]

Chapter I

MEMBERSHIP OF THE NATIONAL ASSEMBLY

Art. 1. The membership of the National Assembly is hereby set at fifty.

[4] *Ibid.*

Chapter II

ELIGIBILITY

Art. 2. Candidates for the National Assembly must satisfy the following conditions:

(1) Be of Niger nationality;

(2) Be domiciled in the Niger;

(3) Be duly entered in an electoral register;

(4) Be not less than twenty-three years of age on voting day;

(5) Be able to read and write French;

(6) Enjoy civil and political rights;

(7) Be entered on a national list drawn up by a legally constituted political party.

Art. 3. The following shall not be eligible:

(1) Persons deprived of their electoral right by a judicial decision under the laws governing such deprivation;

(2) Persons deprived of their legal capacity and persons disqualified from managing their own affairs;

(3) Members of the regular armed forces on the active list and police and security personnel;

(4) Public officials appointed by decree unless they have been given special leave at least three months before voting day;

(5) Members of the judiciary during the exercise of their functions;

(6) The President of the Supreme Court;

...

ACT No. 65-038 OF 9 SEPTEMBER 1965 CONCERNING THE DEFINITION AND PUNISHMENT OF CERTAIN OFFENCES RELATING TO ELECTIONS [5]

Art. 1. Any person who has himself entered in an electoral roll under an assumed name or in a false capacity, or who, at the time of registration, conceals a legal incapacity, or who applies to be and is entered on two or more electoral rolls, shall be liable to a term of two months' to two years' imprisonment and to a fine of 20,000 to 200,000 francs.

Art. 2. Any fraud in the issuing or the presentation of a certificate of registration on or of removal from the electoral rolls shall be subject to the penalties laid down in article 18.

...

Art. 11. Any person who, by means of false information, slanderous rumours or other fraudulent devices, has tricked voters into voting or not voting in a certain way, or has induced one or more voters to refrain from voting, shall be liable to a term of two to five years' imprisonment and to a fine of 50,000 to 500,000 francs.

...

Art. 18. Except as specially provided for by the laws and regulations in force, any person who, either in a State or a municipal committee or in a polling office or the offices of the mayoralties, prefectures or sub-prefectures, before, during of after a poll, through non compliance with the law or regulations or by any other fraudulent act, has attempted to violate or has violated the secrecy of the ballot, has attempted to impair or has impaired its validity, has attempted to impede or has impeded the polling operations, or has attempted to falsify or has falsified the result, shall be liable to a term of six months' to two years' imprisonment and to a fine of 20,000 to 200,000 francs.

The offender may, in addition, be deprived of his civic rights for a period of not less than five and not more than ten years.

If the offender is an administrative or judicial official, a government or public agent, or an employee in the public service, the penalty shall be doubled.

...

[5] *Ibid.*

NIGERIA

HUMAN RIGHTS IN 1964 AND 1965 [1]

INTRODUCTORY NOTE

On 1 October 1963, Nigeria became a Republic and a new Constitution came into force that day. Its Chapter III deals with Fundamental Rights of citizens. Parliament cannot alter the Fundamental Rights provisions without the consent of each Legislative House of at least three of the then four Regions comprised in the Federation. [2] The legislative [3] and executive bodies must observe and conform with these provisions in the exercise of their powers. Parliament in 1964 and 1965 enacted a series of laws on the political, social and economic rights which were not included in the Constitution. These laws are discussed in some detail in part I of this report relating to legislation. Six important cases were decided by the Supreme Court in 1964 regarding infringement of the Fundamental Rights provisions of the Constitution. [4] Three of the cases concerned the right of an accused to fair trial, one case involved the presumption of innocence; one on the right of the citizen to compensation within a reasonable time on the acquisition of his property by the executive, and the last case touched upon the right of an accused person to trial within a reasonable time. In all the cases, the Supreme Court stoutly established itself as the watchdog of constitutional liberties and emphasized its readiness to intervene on behalf of the citizen whenever there is an allegation that the constitutional provisions have been infringed. The cases are discussed in part II of this report.

[1] Note furnished by the Government of Nigeria.

[2] On 15 January 1966, the civilian Government of the former Federal Republic of Nigeria handed over Power to the Nigerian Armed Forces. By the Constitution Suspension and Modification) (No. 5) Decree 1966, Nigeria ceased to be a Federation as from 24 May, 1966.

[3] The Constitution (Suspension and Modification) Decree 1966 suspended all the Legislative Assemblies in Nigeria. The National Military Government assumed power to exercise the legislative functions of the suspended Houses of Legislature.

[4] Although the National Military Government has suspended a large part of the Republican Constitution of Nigeria, it has left the Fundamental Rights provisions unaffected.

PART I: LEGISLATION

(A) Civil Rights

1. *Right to remedies*

Section 8 of the Interpretation Act, 1964 provides that an enactment shall not be construed as preventing the recovery of damages in respect of injury attributable to any act by reason only of the fact that the enactment provides for a penalty or forfeiture or punishment in respect of the Act.

The Civil Aviation Act 1964 provides in its Section 9(2) that where loss or damage is caused to any person or property on land or water by a person in or an article or person falling from an aircraft while in flight, taking off or landing, then, without prejudice to the law relating to contributory negligence, damages in respect of the loss or damage shall be recovered without proof of negligence or intention or other cause of action as if the loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft.

Section 11(1) of the Civil Aviation Act, 1964, provides that any services rendered in saving life from, or in saving cargo or apparel of an aircraft in, or over the sea or any tidal water or on or over the shores of the sea or any tidal water shall be deemed to be salvage services in all cases in which they would have been rendered in relation to a vessel; and where salvage services are rendered by an aircraft to any property or person, the owner of the aircraft shall be entitled to the same reward for those services as he would have been entitled to if the aircraft had been a vessel.

2. *Offences under more than one law*

Section 24 of the Interpretation Act, 1964 provides that where an act constitutes an offence under two or more enactments or under an enactment and at Common Law, the alleged offender shall be liable to be prosecuted and on conviction punished under any one of the enactments or, as the case may be, either under the enactment or at Common Law, but shall not be punished twice for the same offence.

3. *Freedom of information* [5]

The Newspaper Amendment Act, 1964 provides in Section 4(1) that, "Any person who authorises for publication, publishes, reproduces or circulates for sale in a newspaper any statement, rumour or report knowing or having reason to believe that such statement, rumour or report is false shall be guilty of an offence and liable on conviction to a fine of two hundred pounds or to imprisonment for a term of one year." And as provided in Section 4(2) "It shall be no defence to a charge under this section that he did not know or did not have reason to believe that the statement rumour or report was false unless he proves that, prior to publication, he took reasonable measures to verify the accuracy of such statement, rumour or report."

4. *Freedom of worship*

Section 2 of the Lagos Local Government Act, 1964 provides that, "where the Lagos City Council is empowered to accept, hold and administer property for public purposes, the power shall not be deemed to authorise the acceptance, holding or administration of property which is subject to any religious or charitable trust".

5. *Social welfare*

The Children and Young Persons (Amendment) Act, 1965 deals with the custody of any child whose welfare is endangered by disputes to which a parent or guardian is a party. Such child shall be taken before a juvenile court and if the court is satisfied that the welfare of a child brought before it is endangered by the dispute, the court shall make an order either committing the child to the care of any fit person, be he a relative or not, who is willing to take care of the child, or compelling the parent or guardian to enter into a recognizance to exercise proper care and guardianship over the child.

The Nigerian Legion Act, 1964 [6] established as a body corporate, the "Nigerian Legion" to which every ex-serviceman in Nigeria is entitled to be a member.

(B) Political Rights [7]

The Electoral Act, 1964, Section 2 repealed Section 8(2) of the Electoral Act, 1962 which required any person giving notice of objection to the inclusion of a name in the voters' list, to pay a deposit of ten pounds. Section 3 of this Act increased the deposit payable by a candidate for an election from twenty-five to one hundred pounds. Section 4(3) provides that the deposit paid by a candidate shall be returned to him if he withdraws his candidature for the election at any time before the beginning of the period of seven days to the date of election.

The Parliament Disqualification Act, 1965 disqualifies for selection as a Senator or election to the House of Representatives any person who has been sentenced to a term of imprisonment exceeding six months for any of the offences specified in its Schedule. Such a person shall not be qualified for selection as a Senator or election to the House of Representatives at any time during the period of five years beginning with the date on which he is discharged from prison.

(C) Economic Rights

1. *Right to strike.* It was found necessary to curtail the right to strike in the vital field of national defence, hence Section 11 of the Defence Industries Corporation of Nigeria Act, 1964 makes it an offence punishable with a fine or imprisonment or both for any person employed by the Corporation in any capacity, and whether or not a member of a trade union to engage or take part in any strike.

2. *Pensions.* The Pensions (Transferred Services) Act, 1965 made provisions for continuity of service for pension purposes where a person serving in any capacity with the armed forces of Nigeria or in a civil capacity in the public service of the Government of the Federation is transferred from or to the armed forces or from the armed forces to the public service.

The Legal Education (Pensions) Act, 1965 empowers the appropriate authority to declare pensionable any office held by any person in the Nigerian Law School.

Section 28 of the Navy Act, 1964 extends to members of the navy the provisions of the Military Pensions Act, while Section 29 of the Navy Act provides that every officer or rating of the Navy to whom the Military Pensions Act applies who in the actual discharge of his duty and without his own fault has received wounds or injuries or suffered illness shall be entitled to the like benefits as are accorded to members of corresponding rank in the Army. The family of any such officer or rating who has been killed or has died of wounds received on active service, or who has died through illness directly attributable to fatigue or exposure incidental to such service, shall be entitled to such benefits under the Military Pensions Act as may be prescribed.

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[5] The Public Order Decree No. 33 of 1966, Section 3 banned the display or advertisement in any form whatever, signs or any symbols of any political society or association, and makes it an offence whether by spoken words or in writing or any other form whatever for any person to utter or shout publicly any political slogan, political name or nick-name of any member of the community.

[6] For extracts from this Act, see *Yearbook on Human Rights for 1964*, p. 214.

[7] The Public Order Decree No. 33 of 1966 dissolved all political parties, tribal unions and cultural organisations in the Republic and required them to file a list of their assets and liabilities with the National Military Government. The formation of new political, tribal or cultural associations or societies was prohibited. Any procession of three or more persons which in the opinion of the National Military Government is of political nature became an unlawful procession.

Section 5(1) of the Nigerian Research Institutes Act, 1964 empowers the appropriate authority to declare that the office of the director of an institute or of any employee of an institute is pensionable for the purposes of the pensions Act.

3. *Hire-purchase:* The Hire-Purchase Act, 1965 made extensive provisions to regulate hire-purchase practice and in particular guarantee the rights of the hirer: Sections 3 and 4 provide thus:

3. The following provisions in an agreement shall be void, that is to say, any provision:

(*a*) Whereby an owner or a person acting on his behalf is authorised to enter upon any premises for the purpose of taking possession of goods which have been let under a hire-purchase agreement or is relieved from liability for any such entry; or

(*b*) Whereby the right conferred on a hirer by this Act to determine the hire-purchase agreement is excluded or restricted, or any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this Act; or

(*c*) Whereby a hirer, after the determination of the hire-purchase agreement or the bailment in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been determined by him under this Act; or

(*d*) Whereby any person acting on behalf of an owner or seller in connection with the formation or conclusion of a hire-purchase or credit-sale agreement is treated as or deemed to be the agent of the hirer or buyer; or

(*e*) Whereby an owner or seller is relieved from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of a hire-purchase, credit-sale agreement; or

(*f*) Whereby a hirer or buyer is required to avail himself of the services, as insurer or repairer or in any other capacity whatsoever, of a person other than a person selected by the hirer or buyer in the exercise of his unfettered discretion.

4. (1) In every hire-purchase agreement there shall be:

(*a*) An implied warranty that the hirer shall have and enjoy quiet possession of the goods;

(*b*) An implied condition on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass;

(*c*) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass;

(*d*) Except where the goods are let as second-hand goods and the note or memorandum of the agreement made in pursuance of section 2 of this Act contains a statement to that effect, an implied condition that the goods shall be of merchantable quality, so however that no such condition shall be implied by virtue of this paragraph as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made or, if the hirer has examined the goods or a sample of them, as regards defects which the examination ought to have revealed.

(2) Where the hirer expressly or by implication makes known the particular purpose for which the goods are required there shall be an implied condition that the goods shall be reasonably fit for that purpose.

(3) The warranties and conditions set out in subsection (1) above shall be implied notwithstanding any agreement to the contrary, and the owner shall not be entitled to rely on any provision in the agreement excluding or modifying the condition set out in subsection (2) above unless he proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.

(4) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in a hire-purchase agreement.

Section 8 gives the hirer the right to determine the hire-purchase agreement and provides thus:

8. (1) A hirer shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorised to receive any sums payable under the agreement and shall, on determining the agreement under this section, be liable, without prejudice to any liability which has accrued before the termination, to pay the amount, if any, by which one-half of the hire-purchase price exceeds the total of the sums paid and the sums due in respect of the hire-purchase price immediately before the termination, or such less amount as may be specified in the agreement.

(2) Where a hire-purchase agreement has been determined under this section, the hirer shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

(3) Where a hirer, having determined a hire-purchase agreement under this section, wrongfully retains possession of the goods, then, in any action brought by the owner to recover possession of the goods from the hirer, the court shall, unless it is satisfied that having regard to the circumstances it would not be just and equitable so to do, order the goods to be delivered to the owner without giving the hirer an option to pay the value of the goods.

(4) Nothing in this section shall prejudice any right of a hirer to determine a hire-purchase agreement otherwise than by virtue of this section.

Also Section 9 limits the owner's right to recover the goods unless by action. Section 9 reads thus:

9. (1) Where goods have been let under a hire-purchase agreement and the relevant proportion of the hire-purchase price has been paid (whether in pursuance of a judgment or otherwise) or tendered by or on behalf of the hirer or any guarantor, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by action.

(2) If an owner recovers possession of goods in contravention of the foregoing subsection, the hire-purchase agreement, if not previously determined, shall determine and:

(*a*) The hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner in an action for money had and received all sums paid by the hirer under the agreement or under any security given by him in respect of the agreement; and

(*b*) Any guarantor shall be entitled to recover from the owner in an action for money had and received all sums paid by him under the contract of guarantee or under any security given by him in respect of that contract.

(3) The foregoing provisions of this section shall not apply in any case in which the hirer has determined the agreement or the bailment by virtue of any right vested in him.

(4) In this section and elsewhere in this Act "the relevant proportion", where the reference is to the relevant proportion of the hire-purchase price of any goods or to the relevant proportion of a part (however described) of that price, means:

(*a*) In the case of goods other than motor-vehicles, one-half; and

(*b*) In the case of motor-vehicles, three-fifths.

PART II: JUDICIAL DECISIONS

Fair Trial

1. Ajayi & Another *v.* Zaria N.A. (1964) N.N.L.R.61

Appellants were charged before a Native Court where the proceedings were in Hausa language. Appellants spoke Yoruba language fluently, but understood English imperfectly. During their trial at the Native Court, the proceedings were interpreted by five different interpreters at successive stages, and two of these interpreted into English while one interpreted into Yoruba. At least in two instances, the ability of the interpreters to interpret satisfactorily was in doubt. It was not disputed on appeal that the evidence in Chief of the prosecution witnesses was not interpreted sentence by sentence, all the appellants received was a summary of so much of the evidence as the interpreter remembered or thought important. Appellants were convicted. On appeal, appellants contended that the procedure in the Native Court deprived them of their right to have adequate interpretation of the language used by the court whenever the accused does not understand that language, as provided by Section 21(5)(e) of the Constitution of Nigeria.

Held: It was essential that the appellants had a fair opportunity to defend themselves and, in particular, that they were accorded in full the right conferred by Section 21(5)(e) of the Constitution of the Republic. The convictions were quashed.

L. African Press Ltd. and Ayo Ojewunmi *v.* Attorney-General for Western Region S.C. 538/64 (*Unreported*)

The appellants were convicted of publishing a seditious publication contrary to Section 47(1)(c) of the Criminal Code of Western Nigeria. The charge arose out of an editorial comment by the second defendant in the first defendant's newspaper—the "Tribune". In their defence, the appellants sought to put some documents belonging to the Western Regional Government in evidence, but the Minister concerned refused the production of these documents. He issued a certificate under Section 219 of the Evidence Act stating merely that the Minister was satisfied that the production of the document was contrary to the public interest. The appellants argued that this unfairly prevented them from proving that they had no seditious intention; and that although the Minister is perfectly entitled to issue a certificate under Section 219 of the Evidence Act, yet it remains the duty of the Court to uphold the right to a fair trial, and if in a criminal case there are reasonable grounds for supposing that the exclusion of evidence by such a certificate might have prejudiced the accused in making his defence, the court is bound to hold that the prosecution has not proved its case beyond reasonable doubt.

Held: In deciding whether the appellants have suffered any genuine prejudice it is material to consider the evidence actually given for the defence. In the present case, when the second appellant gave evidence he made no attempt to justify the article as being based on the truth, indeed he abstained from saying that he believed it was so based. Since the intention is the test of whether a publication is seditious, we do not consider that a defendant whose own evidence shows that his charges were based on mere suspicion, or an uncritical acceptance of allegations made by others, can demand a disclosure of everything that passes within a government office in the hope that he may find something that would justify his charges or complain that he was prevented from showing that his intention was an innocent one if such a disclosure is not made.

3. O. Yanor, M. Andiar *v.* The State S.C. 165/1965 (*Unreported*)

The appellants were convicted of the offence of culpable homicide contrary to Section 221 of the Penal Code (Northern Nigeria), and each sentenced to death by the High Court. In the course of the trial in the High Court, learned counsel for appellants asked for adjournment of the trial as one of the witnesses for the defence

was not available in court: this was on 12 December 1964. Application was granted by the learned trial judge and further hearing was adjourned to 14 December 1964. On further applications by defence for the same reason, further hearings were subsequently adjourned to 15 December 1964; 18 January 1965; 22 January 1965; 1 February 1965; 4 February 1965. On 4 February 1965, application by the defence for further adjournment to produce the same witness was rejected, and hearing proceeded. The appellants now appealed against their conviction on the ground that "The refusal of the learned trial judge to grant an adjournment enabling the appellants to call a witness was prejudicial to fair trial", contrary to Section 22(5) (b) of the Constitution of the Republic.

Held: On the submission that the appellants were not given adequate opportunity to produce a witness, the appeal court takes the view that in the circumstances of the trial at the lower court, the submission lacks merit. Per Idigbe, J.S.C. "If in the course of hearing of a criminal case, an accused person applies to the court for postponement of the trial on the ground that a witness for the defence was not available, he should normally satisfy the Court on three important issues, and they are: (1) that the witness sought to be produced is a material witness for his defence, (2) that he (the applicant) has not been guilty of laches or neglect in procuring the attendance in court of the witness, and (3) that there is reasonable expectation of his being able to procure the attendance in court of the witness at the future time to which he prays the trial to be posponed... where the court is satisfied that an accused person has made a genuine effort to secure the attendance of a witness who could give material evidence and has failed to do so for reasons outside his own control, the court should bear the fact in mind when assessing the evidence before it, and give it such weight as justice seems to require".

Presumption of Innocence [8]

4. Adamu Diu Tulu *v.* Bauchi N.A. S.C. 183/1965 (*Unreported*)

Appellant was tried for an offence of culpable homicide in the Emir of Bauchi's Court. The Court framed the charge after the complainant's witnesses were heard, and told appellant what the charge was. What happened next appeared in the Court's notes as follows:

> "Court to Adamu Diu: Have you anything to say on this?
>
> "Adamu Diu: Yes: I have something to say.
>
> "Court to Adamu Diu: I want you to tell me what happened between you and Samaila before you cut him to death?"

Appellant contended on appeal against his conviction that he was presumed guilty by the court before he had opportunity to make his defence.

Giving the judgment of the Court, Bairamain, J.S.C. said: "That (that is the question from the Court) plainly means that the trial court had already decided that the accused person had committed the homicide without waiting to hear what the accused had to say in his defence, and that with respect was a mistake. There are in a charge of homicide, several questions. One is—did the accused person cause the death of the deceased? And this should not be decided until the trial is concluded. Regard should be had to Section 22(4) of the Constitution, which provides that:

> "(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved to be guilty."

The conviction and sentence were quashed.

Right to Trial within Reasonable Time [9]

5. Illa Ringim *v.* Kano Native Authority K/M85/65 (*Unreported*)

Applicant was arrested on 29 October 1964, at Ringim Prison yard on an accusation of killing a prison warder. Although he and six others accused with him have appeared in Emir of Kano's Court twice, but over a period of ten months no hearing date was fixed, and no "charge" was brought against the accused. Applicant therefore brought this application to the High Court seeking:

(1) admitting applicant to bail pending trial on the ground that it was not possible for the Emir of Kano's Court to try him within a reasonable time,

(2) directing that a preliminary inquiry into the allegation against the applicant be held in the Magistrate's Court of Kano so as to enable him to prepare for his defence if necessary.

The prosecution objected to this application on the grounds that (1) the Emir of Kano's Court being a court of concurrent jurisdiction as the High Court, the High Court has no power to intervene in this case (2) no man can be said to be "charged" until a formal charge is read

[8] Section 13 of the Indian Hemp Decree No. 19 of 1966 provides that "where, in any proceedings for any offence under this Decree involving the doing of anything knowingly or the having of anything in one's possession knowingly, it is proved or admitted that the accused did that thing or had that thing in this possession, he shall be taken to have done it or had it in his possession knowingly unless he proves the contrary" thus once the prosecution proves the *actus reus* of an offence under the Decree, it need not prove the *mens rea*.

[9] The State Security (Detention of Persons) Decree No. 3 of 1966 empowered the Head of the National Military Government to detain for a period not exceeding six months under conditions as to confinement, discipline, and punishment for breaches of discipline applicable to persons duly convicted of an offence by a court of law; any person of whom the Head of the National Military Government is satisfied that the arrest and detention are in the interest of the security of Nigeria.

out under Section 160 of the Criminal Procedure Code or an adequate statement in lieu thereof is made under section 387 of the code, and in the absence of a formal charge, section 22(2) of the Constitution of the Republic which provides that anybody charged with a criminal offence shall be entitled to a fair trial within a reasonable time by a court, cannot apply.

Held: The object of the constitutional provision is to see that any man awaiting trial shall not have to wait for an unreasonably long time, and that when his trial does come, it shall be a fair one. Once a man has been told that the prosecutor intends to make a complaint against him, then he knows that there will be a prosecution brought and that he is being accused of an offence, and he is entitled under Section 22(2) of the Constitution of the Republic to a fair trial of that accusation within a reasonable time.

Section 32(2) of the Constitution of the Republic which grants the High Court[10] original jurisdiction to hear and determine any application made to it in respect of any alleged infringement of the fundamental rights provisions of the Constitution of the Republic, makes it quite clear that the High Court can in a proper case exercise the power to the extent of issuing a writ of *mandamus* to set in motion the Emir of Kano's Court. The Constitution has specifically appointed the High Courts of the various territories to be the watchdog of constitutional liberties and has for that reason given them power to go into such matters as this application even as against other courts of concurrent jurisdiction. As to the application for bail, that must fail in view of absolute statutory bar to bail being granted in cases of homicide.

[10] Section 6 of the State Security (Detention of Persons) Decree No. 3 of 1966 provides that the question whether any provision of Chapter III of the Constitution (i.e. the provisions guaranteeing fundamental human rights) has been or is being or would be contravened by anything done or proposed to be done in pursuance of the Decree shall not be inquired into in any court of law. An application for a writ of *habeas corpus ad subjiciendum* shall not lie at the instance of a person detained under the Decree or on his behalf.

Section 21 of the Suppression of Disorder Decree No. 4 of 1966 expressly excluded the application of Section 32 of the Constitution (which gave the High Courts power to inquire into allegations of contravention of the human rights provisions of the Constitution) to its provisions.

Deprivation of Property

6. Jamil Saidi *v.* Chairman, L.E.D.B. F.S.C. 486/1963 (*Unreported*)

Respondent acquired appellant's property compulsorily under the Lagos Town Planning Act. Six years after the acquisition no offer of compensation had yet been made to appellant. Appellant brought an application in the High Court of Lagos for an order of *mandamus* requiring respondent to make immediate offer of compensation to appellant. Respondent successfully resisted the application on the ground that the scheme for which the property was required was still under consideration.

On appeal; *held:*

By Section 31 of the Constitution of the Republic, no property movable or immovable shall be taken compulsorily except by or under the provisions of a law that requires the payment of adequate compensation. The right to compensation granted by the Constitution should not be unreasonably delayed because a right delayed beyond a reasonable period is a right denied and a delay of six years is far in excess of what is reasonable. The delay that has occurred in this case is thoroughly discreditable to a public body. The appellant has established a right to the order he seeks. Per Brett, J.S.C. "He (appellant) had a clear right either to receive an offer of compensation or to be told why the Board maintains, if it does so maintain, that he is not entitled to any compensation, so that he may test the matter in the courts, and this right is not only conferred by the Lagos Town Planning Act, but by Section 31 of the Constitution of the Republic."

NORWAY

NOTE [1]

A. LEGISLATION

1. *Act of 19 March 1965 (No. 3) relating to exemption from military service for conscientious reasons*

This law replaces a previous law of 1937 relating to conscription of civilian workers (conscientious objectors). The law empowers, as did the previous law, the Ministry of Justice to grant a person exemption from military service and transfer him to civilian work. The material conditions for being exempted from military service are the same as under the previous law, namely that there must be reason to believe that performing military service of any kind would be contrary to the earnest conviction of the person in question. Refusal of exemption can be brought before the courts.

Under the previous law, a person who failed to present himself for military service in spite of the exemption having been refused by the Ministry would be prosecuted under the Military Penal Code for refusal of performing military duties. The accused would, however, be acquitted and transferred to civilian work if the court came to the conclusion that performing military service of any kind would be contrary to his personal conviction. This procedure has now been changed. Under the new law it shall be decided by a *civil* court whether the conditions for exemption are fulfilled.

Those who are exempted from military service shall perform civilian work for a period of up to 180 days longer than the period of service in the Army.

2. *Act of 4 June 1965, relating to the observance of holidays*

This law has clarified the previous uncertain position in law regarding the observance of holidays and has replaced partly outdated provisions by more suitable ones. The aim of the law is to protect the religious life and the general peace on Sundays and other Church holidays. On ordinary Sundays general peace should be observed from 6 a.m. to 1 p.m. During Christmas, Easter and Whitsun general peace should be observed from 9 p.m. on Christmas Eve until midnight on Christmas Day, Saturday before Easter Sunday and Saturday before Whit Sunday, Easter Sunday and Whit Sunday respectively. On Boxing Day, Easter Monday, Whit Monday, New Year's Day, Maundy Thursday and Ascension Day the provisions relating to ordinary Sundays apply. On Good Friday the general peace lasts from 6 a.m. to midnight.

During the period of general peace it is not allowed to disturb religious services or the general peace by unnecessary noise, work, etc. The law also contains provisions prohibiting, with certain exceptions, all public performances, arrangements, etc., during the period of general peace. Dispensation can in certain cases be granted upon application to the head of police.

3. *Act of 9 April 1965 (No. 3), relating to penal measures against young offenders*

By this law the previous work-school treatment for young offenders has been converted into a special punishment "Youth prison". The law furthermore introduces a new type of penalty by name of "Youth detention". These sanctions can be applied to offenders of up to 21 years of age. In certain cases, youth prison can be applied to offenders of up to 23 years of age. "Youth prison" and "Youth detention" are alternatives to ordinary penal measures.

"Youth detention" for which the period of detention has been fixed at sixty days, is used where the court thinks a short term imprisonment adequate for the purpose. The period of detention can be reduced to fifty days if the inmate behaves himself well.

In the youth detention institutions special emphasis is placed on good discipline and order and on activating the inmates by gymnastics and teaching.

"Youth prison" is applied if the court thinks that a longer period of detention is necessary. The inmates can be kept in such prisons for two years, as against three years in the previous work school. They may be released on probation after twelve months by decision of the prison direction and after nine months by decision of the Prison Board. Suspended sentences cannot be applied.

The provisions of the Child Care Act of 1953 regarding the prosecuting authorities' handling of offences committed by offenders between 14

[1] Note furnished by the Government of Norway.

and 18 years of age have been replaced by new provisions. Instead of formal waivers of prosecution under the Child Care Act a less formal transfer of the case from the prosecuting authority to the child care authority has been instituted. Such a transfer does not exclude a subsequent prosecution for the same offence. The prosecution office can take the case back if the offender commits a new offence, or if the child care authority asks for it or if the prosecution authority is of the opinion that the measures taken by the child care authorities are inadequate.

B. JUDICIAL DECISIONS

1. *Supreme Court decision of 29 January 1965*

The law of 15 November 1963, relating to the execution of Nordic sentences, which entered into force on 1 January 1964, had been applied in a case where a Danish court had pronounced a sentence on 7 November 1963.

The Supreme Court ruled that this was not a violation of the provision of section 97 of Norway's Constitution which proclaims that no law shall be given retroactive effect.

2. *Supreme Court judgement of 2 June 1965*

A medical student refused to attend the military training school for the medical service, maintaining that he was a convinced opponent of national military forces. He would, on the other hand, consider serving with international forces, preferably under the United Nations leadership and was willing to undergo military training in Norway in return for a binding declaration to the effect that his subsequent service would be performed with international forces. The Supreme Court decided (one judge dissenting) that this conviction did not by its nature satisfy the requirement for exemption from military service.

C. INTERNATIONAL AGREEMENTS

Norway has not, in the course of 1965, made any international agreements of interest to human rights outside of the United Nations, the specialized agencies of the United Nations and the Council of Europe.

PAKISTAN

NOTE [1]

I. EAST PAKISTAN

(*a*) The East Pakistan Inland Water Transport (Regulation of Employment) Act, 1965 (East Pakistan Act No. III of 1965) regulates methods of recruitment, payment of wages, conditions of service of workers employed in Inland Water Transport vessels and provides for inspection thereof, and creates funds to carry out welfare measures for their benefit;

(*b*) The East Pakistan Factories Act, 1965 (East Pakistan Act No. IV of 1965) regulates working conditions in factories and matters connected therewith;

(*c*) The East Pakistan Trade Unions Act, 1965 (East Pakistan Act No. V of 1965) provides for the registration and recognition of trade unions, and in certain respects to define the law relating to registered trade unions and recognised trade unions in East Pakistan, and for matters connected therewith;

(*d*) The East Pakistan Labour Disputes Act, 1965 (East Pakistan Act No. VI of 1965) provides for the investigation and settlement of labour disputes, and for matters connected therewith;

(*e*) The East Pakistan Shops and Establishments Act, 1965 (East Pakistan Act No. VII of 1965) regulates the holidays, payment of wages, leave, hours of work and certain other allied matters concerning the workers employed in shops, commercial establishments and industrial establishments not being factories;

(*f*) The East Pakistan Employment of Labour (Standing Orders) Act, 1965 (East Pakistan Act No. VIII of 1965) regulates conditions of service of workers employed in shops and commercial and industrial establishments and matters connected therewith.

II. WEST PAKISTAN

(A) By Order of the Governor of West Pakistan of 18 February 1965, the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 [2] was amended as follows:

1. For rule 3 the following new rule shall be substituted:

"3. The Union Council which shall have jurisdiction in the matter for the purpose of clause (*d*) of section 2 shall be as follows, namely:

"(*a*) In the case of an application for permission to contract another marriage under sub-section (2) of section 6, it shall be the Union Council of the Union or Town where the existing wife of the applicant, or where he has more wives than one, the wife with whom the applicant was married last, is residing at the time of his making the application;

Provided that if at the time of making the application, such wife is not residing in any part of West Pakistan, the Union Council that shall have jurisdiction shall be:

(i) in case such wife was at any time residing with the applicant in any part of West Pakistan the Union Council of the Union or Town where such wife so last resided with the applicant; and

(ii) in any other case, the Union Council of the Union or Town where the applicant is permanently residing in West Pakistan;

"(*b*) In the case of notice of *talaq* under sub-section (1) of section 7, it shall be the Union Council of the Union or Town where the wife in relation to whom *talaq* has been pronounced was residing at the time of the pronouncement of *talaq*;

Provided that if at the time of pronouncement of *talaq* such wife was not residing in any part of West Pakistan, the Union Council that shall have jurisdiction shall be:

(i) in case such wife was at any time residing with the person pronouncing the *talaq* in any part of West Pakistan the Union Council of the Union or Town where such wife so last resided with such person; and

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[1] Note based upon texts furnished by the Government of Pakistan.

[2] For extracts from the Muslim Family Laws Ordinance, 1961, see *Yearbook on Human Rights for 1961*, pp. 275 and 276.

(ii) in any other case, the Union Council of the Union or Town where the person pronouncing the *talaq* is permanently residing in West Pakistan; and

"(*c*) in case of an application for maintenance under section 9, it shall be the Union Council of the Union or Town where the wife is residing at the time of her making the application, and where application under that section is made by more than one wife, it shall be the Union Council of the Union or Town in which the wife who makes the application first is residing at the time of her making the application."

2. In rule 6, in sub-rule (2) the full stop at the end shall be replaced by a colon and thereafter the following proviso shall be added:

"Provided that where a party on whom the order is to be served is residing outside Pakistan, the order may be served on such party through the Consular Officer of Pakistan in or for the country where such party is residing."

(B) By Order of the Governor of West Pakistan of 2 October 1965, the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 were further amended as follows:

After rule 3, the following new rule shall be inserted, namely:

"3A. Where the whereabouts of the wife, to be supplied a copy of the notice of *talaq* under sub-section (1) of section 7 of the Ordinance, are not known to the husband and cannot, with due diligence, be ascertained by him, he may, if so permitted by the Chairman, give notice of the *talaq* to the wife through her father, mother, adult brother or adult sister, if any, and if the wife has no father, mother, adult brother or adult sister, or if their whereabouts are not known to the husband or cannot, with due diligence, be ascertained by him, he may, with the permission of the Chairman, serve the notice of *talaq* on her by publication in a newspaper, approved by the Chairman, having circulation in the locality where he last resided with the wife."

PANAMA

ACT No. 6 OF 22 JANUARY 1965 [1]

Article 1. An educational institution for vocational guidance and training, to be called Chapala Vocational School, shall be established in Chapala, Arraiján District, Panamá Province and shall have its own resources, legal personality and autonomy in administrative matters.

Article 2. The Chapala Vocational School shall have the following specific objectives:

(*a*) To rehabilitate youthful offenders and give them vocational guidance and training;

(*b*) To apply supervision with a view to ensuring their well-being;

(*c*) To endeavour, by scientific means and modern techniques of dealing with youth, to change the behaviour of the trainees and adapt them effectively to a normal and decent life for the benefit of society;

(*d*) To carry out any projects that may in the future be considered appropriate to the purposes of the Institution.

...

Article 9. Only a juvenile court may order that minors under the age of eighteen (18) years shall be placed in the institution or released therefrom, although account may be taken of the recommendations made by the Director of the School regarding the length of time each trainee is to remain in the school depending on preparedness for community life.

...

[1] *Gaceta Oficial,* No. 15,306, of 10 February 1965.

PERU

SUPREME DECREE No. 127 E.P. [1]

1. Industrial technical training centres for inmates shall be established in penal institutions with the co-operation of the Ministry of Public Education as subsidiaries of the Industrial Technical Institute of the Ministry of Justice and Religion.

2. The industrial technical training centres in penal institutions shall develop their activity as the institutions obtain workshops, machinery, supplies and adequately trained instructors.

3. The Ministry of Public Education shall, through its Division of Technical Education and Craftsmanship Development, draw up plans and programmes and shall define the work units of the various occupations taught at the Technical Training Centres, taking into account the industrial facilities of the Centres.

...

[1] *El Peruano*, No. 7162, of 27 March 1965.

POLAND

NOTE[1]

I. LEGISLATION

1. On 12 November 1965 the Sejm of the Polish People's Republic passed the Act on private international law (*Journal of Laws,* No. 49, text 290).

Article 8 of this Act provides that aliens have in Poland rights and duties on equal terms with Polish nationals, unless otherwise provided for by the Act. This provision is consistent with the postulates contained in *Articles 2 and 7 of the Universal Declaration of Human Rights.*

Article 9 of the Act making the legal capacity of a natural person subject to his national law corresponds to the contents of *Article 6 of the Universal Declaration.*

Articles 14-18 of the Act, regulating conflicts of the law on marriage and subjecting legal relations between spouses to their national law are in accordance with the purpose of *Article 16 of the Universal Declaration.*

The same concurrence can also be found as regards other rules of the aforesaid Act. For instance Article 32—under which parties may submit work relations to a law chosen by them, provided it has some connection with these relations—is consistent with the purpose of *Article 23 of the Universal Declaration.*

2. As regards *Article 23 of the Universal Declaration* the following legal acts pertaining to work safety and hygiene should moreover be noted:

(*a*) The Ordinance of 25 January 1965 on work safety and hygiene of divers issued by the Ministers of Shipping, Health and Social Welfare, Heavy Industry, Building and Building Materials, Transport and by the President of the Central Office of Water Economy (*Journal of Laws* of 13 February 1965, text 25).

(*b*) The Act of 30 March 1965 concerning work safety and hygiene (*Journal of Laws,* No. 13, of 6 April 1965, text 91) regulates in a uniform way problems of work safety and hygiene in all work establishments in Poland. Its main provisions are as follows:

Article 1. (1) A work establishment shall be obliged to ensure to its employees safe and hygienic conditions of work, excluding any threat to their life or health.

(2) The realization of the obligation defined in paragraph 1 shall proceed on the basis of most recent achievements of science and technology and shall be an inseparable part of the activity of a work establishment.

...

Article 3. A work establishment shall be obliged to ensure safe and hygienic conditions of work also to persons who are not its employees but perform business or social functions in the establishment, unless specific regulations charge this obligation to other units or persons.

Article 4. (1) A work establishment shall be obliged to ensure safe and hygienic conditions of practical training to students of higher schools, pupils of vocational schools and other persons who are not its employees.

(2) The obligation defined in paragraph (1) rests also with schools and other educational institutions in relation to persons pursuing studies at these schools and institutions or getting there practical knowledge of their profession, receiving practical and technical training or performing socially useful works.

...

Article 8. A work establishment shall set in its annual and long-term programmes of activity concrete tasks for improvement of conditions of work safety and hygiene and ensure means, in particular financial and material, necessary for the implementation of these tasks. The cost of these means shall not be charged to employees.

Article 9. A work establishment shall be obliged to help its employees devise projects in the field of work safety and hygiene and shall ensure to inventors direct participation in works on the implementation of these projects.

Article 10. The over-all national programme of scientific research and programmes of research conducted by appropriate scientific and scientific-research centres shall comprise also problems related to work safety and hygiene.

Articles 11-13 regulate matters connected with the question of meeting the requirements of work safety and hygiene at designing, constructing and maintaining buildings and places of work.

[1] Note furnished by the Government of Poland.

Article 11. (1) Estimates and designs of a work establishment being newly built shall take into full consideration the requirements of work safety and hygiene;

(2) Estimates and designs of a work establishment being reconstructed or of part thereof shall ensure the improvement of existing conditions of work safety and hygiene.

...

Article 13. A work establishment shall be obliged to maintain places of work, buildings and other building objects as well as areas and installations connected therewith in a state ensuring safe, hygienic and convenient conditions of work.

Articles 14-17 regulate matters connected with meeting the requirements of work safety and hygiene at the designing and building of machinery and tools, forbid the production of such machinery and devices if they do not conform to the requirements of work safety and hygiene and prohibit the trade therein.

Articles 18-24 regulate the problem connected with prophylactic protection of health and medical care for the employed, and in particular:

Article 18. (1) A work establishment shall be obliged to apply means preventing occupational diseases and other maladies resulting from conditions of work environment, and particularly to install and keep in a state of efficiency facilities indispensable for counteracting factors that cause these diseases and maladies.

...

Article 20. (1) Before allowing an employee to start work, a work establishment shall have him undergo a medical examination (initial check-up).

(2) During the period of employment an employee is liable to periodical check-ups.

...

Article 23. (1) If medical examination proves a worker's permanent disability for a given work on account of an accident at work, occupational disease or other malady caused by conditions of work environment, the work establishment shall transfer him to another work suitable to his state of health and his professional qualifications.

Article 24. (1) A work establishment shall ensure to its employees performing work particularly detrimental to health special free feeding, if this feeding is necessary for prophylactic reasons.

Articles 25-26 set general hygienic and sanitary requirements which work establishments must fulfil with regard to their employees.

Articles 27-30 regulate matters connected with the training of pupils, students and employees in work safety and hygiene.

Article 31 regulates the matter of provision by a work establishment to its employees of protective and working clothing and personal safety equipment.

Articles 32-45 regulate such questions as that of reports on accidents at work and occupational diseases, of the employees' duties as regards the observance of work safety and hygiene, of work safety and hygiene service in work establishments and in their superior organs, of supervision over the execution of the tasks in the field of work safety and hygiene.

On the basis of this Act executive orders and detailed executive regulations will be issued for particular branches of the national economy.

(*c*) The Ordinance of the Chairman of the Council of Ministers of 9 July 1965 on work safety and hygiene and fire safety in mining establishments extracting deposits through drills and in establishments conducting drilling works from the surface (*Journal of Laws*, No. 32, of 24 July 1965, text 212).

(*d*) The Ordinance of the Chairman of the Council of Ministers of 9 July 1965 on work safety and hygiene and fire safety in open-pit mining establishments (*Journal of Laws*, No. 32, of 24 July 1965, text 213).

3. As regards *Article 24 of the Universal Declaration* attention should be drawn to the Ordinance of the Council of Ministers of 21 June 1965 concerning additional leave with pay for certain workers employed in heavy industry establishments (*Journal of Laws*, No. 26, of 29 June 1965, text 176).

4. As regards *Article 25 of the Universal Declaration* worthy of notice is the Act of 29 March 1965 on social insurance for artisans (*Journal of Laws* of 6 April 1965, No. 13, text 90). This Act lays down *inter alia*:

Article 1. Compulsory social insurance, hereinafter called "insurance", covers artisans and persons co-operating with artisans.

Article 3. The insurance covers:

(1) medical treatment (art. 11-15);

(2) old-age pension (art. 16-19);

(3) disability pension (art. 20-23);

(4) survivors' pension (art. 24-26);

(5) additional allowances (art. 27-28);

(6) funeral grants (art. 29 and 30);

(7) benefits in kind for pensioners (art. 31).

Article 4. The cost of the insurance is financed from funds made up of contributions paid by artisans.

...

Articles 32-35 regulate matters connected with the acquisition and extinction of the right to pension.

Articles 36-38 set principles of paying contributions.

Article 39 determines the procedure.

Articles 40-48 contain transitional and final provisions.

Article 47 provides that the Council of Ministers may by way of an ordinance extend the provisions of this act to persons performing work for socialized work establishments, if these persons are not in employment relations with these establishments, to boat and cutter fishermen engaged in fishery on their own, and also to other persons engaged in services and productive work on a small scale, and regulate therein the principle of insuring those persons in a way that takes into account the specific nature of their activity.

The aforesaid Act came into force on 1 July 1965.

5. The postulates contained in *Article 26 of the Universal Declaration* have long been practised in Poland, education being free in schools of all levels.

On 31 March 1965 there was published the new Act on academic degrees and titles, which makes it possible to award degrees not only to persons meeting formal conditions (i.e. possessing diplomas) but also to those who show special abilities for scientific research work (*vide* Art. 4, para. 3 of the Act of 31 March 1965, on academic degrees and titles—*Journal of Laws,* No. 14, text 101).

Likewise the Act of 31 March 1965 to amend the Act of 5 November 1958 on higher education (*Journal of Laws* of 1965, No. 14, text 98) allows in cases meriting special consideration—for the admission to higher schools of persons who though not meeting formal conditions (lack of secondary school graduation certificate) show a sufficient degree of preparation for higher studies (*vide* Art. 49, para. 3 of the Act of 5 November 1958 on higher education—consolidated text—*Journal of Laws* 1965, No. 16, text 114).

II. JUDGEMENTS OF THE SUPREME COURT

Judgement of the Supreme Court of 1 June 1965, No I CZ./135/64. The Court, in raising maintenance payments, was mindful of the child's welfare. It ruled that the difference in the child's age arising from the passage of time since the date on which the amount of maintenance was determined in itself justified a growth in needs connected with attending school, taking additional lessons and the like, which in turn entailed the necessity to bear the expenses resulting therefrom.

Worth mentioning are the judgements of the Supreme Court recognizing the responsibility of a work establishment in the event of sickness resulting from excessive overtime work, particularly in conditions detrimental to health, or at night where the worker's state of health did not allow for such work (II PR 602/64 of 3 December 1964, published in OSP and KA No. 2/59, p. 92; I PR 102/64 of 3 April 1965; II PR 38/65 of 3 March 1965).

The Supreme Court in its judgements (e.g. I PR 227/65 of 15 September 1965; II PR 183/65 of 20 May 1965), constantly emphasized the obligation of an employer to apply suitable protective measures required by the given kind of work. The Supreme Court holds that a work establishment has the obligation to create such conditions of work as they would make work not only safe but also not too excessively onerous. An employer while assigning a concrete work to his employee is obliged to take into consideration the indications of physiology and psychology of work (II PR 685/64 of 18 January 1965, published in OSN 1965, No. 7-8, text 136).

A work establishment cannot shun the responsibility under art. 24(2) of the decree on general provision of superannuation benefits for employees and their families of 25 June 1954, i.e. the liability for damages for an accident at work, on account of the so-called "objective difficulties", particularly on account of an experimental character of works (I PR 775/63 of 21 March 1964). Nor can the lack of the indispensable facilities and sanitary materials be excused by the fact that those facilities were at the time of constructing an enterprise in a stage of organization (II PR 538/64 of 12 February 1965).

An employer is held responsible for the effect of a sickness, disability for work or death of an employee also where the employee performed work within the framework of a social pledge (I PR 407/64 of 6 January 1965).

The Supreme Court has adopted the principle of the responsibility of a work establishment, recognizing that an employee cannot be deprived of the means which make his work safe in a manner prescribed by the rules of work safety and hygiene, also when executing a work under commission or agreement for work (e.g. the judgement I PR 138/65 of 31 May 1965).

III. INTERNATIONAL AGREEMENTS

1. On 29 June 1965 the Council of State ratified the Convention concluded between the Government of the Polish People's Republic and the Government of the Union of Soviet Socialist Republics on the prevention of cases of dual nationality, signed in Warsaw on 31 March 1965. The Convention became effective on 30 January 1966 and was published in the *Journal of Laws,* No. 4, text 19, 1966.

2. On 30 September 1965 the Council of State ratified the Convention concluded between Poland and Czechoslovakia to regulate problems of dual nationality, drawn up in Warsaw on 17 May 1965. The Convention became effective on 20 May 1966 and was published in the *Journal of Laws,* No. 19, text 120, 1966.

3. On 21 January 1965 the Council of State ratified the Single Convention on Narcotic Drugs, drawn up in New York on 30 March 1961. The publication of the Convention is under way.

PORTUGAL

NOTE [1]

I. LEGISLATION

Legislative Decree No. 46 156, of 16 January sets up in the Ministry of National Education, a group of experts for the Study in Planning of Educative Action.

Decree No. 46 168 of 20 January sets up in the province of Timor the itinerant brigade of studies for combating endemic diseases in the said province.

Legislative Decree No. 46 172 of 22 January permits that workers covered by an insurance company against the risk of professional diseases be admitted as beneficiaries by the National Scheme of Insurance against Professional diseases (Caixa Nacional de Seguros de doenças profissionais), exempting them from the provisions of article 9 of Legislative Decree No. 44 307.

Decree No. 46 180 of 6 February approves the statutes of the International Academy of Portuguese Culture.

Notification No. 21 114 of 17 February determines that the lessons given through radio broadcasts (school radio) as a supporting measure for primary education should pass under the control and charge of the tele-school, established by Decree No. 46 136.

Legislative Decree No. 46 308 of 27 April lays down regulations to cover the construction or remodelling of regional hospitals.

Legislative Decree No. 46 310 of 27 April reorganizes the services of the Directorate General of Hospitals.

Notification No. 21 250 of 27 April creates the Center of Infantile Mental Health of Lisbon.

Legislative Decree No. 43 316 of 29 April promulgates the internal regulations of the Home for Military Veterans.

Decree No. 46 349 of 22 May promulgates rules governing the National Board of Education.

Legislative Decree No. 46 350 of 22 May inserts dispositions relating to the functioning of libraries and archives.

Decree No. 46 371 of 8 June regulates the commerce, use and possession of narcotic drugs in the overseas province of Macao.

Legislative Decree No. 46 458 of 28 July inserts dispositions intended to give priority to the processing of civil or criminal actions in which the Government (Ministério Publico) is a party and criminal actions in their preparatory phase.

Decree No. 46 464 of 31 July sets up in the overseas provinces various modalities of agricultural education, provided for in Law No. 2 025.

Law No. 2 127 of 3 August promulgates the bases of the legal régime for accidents arising from work and professional diseases.

Notification No. 21 448 of 6 August creates the Center for Mental Health of Portalegre.

Legislative Decree No. 46 503 of 25 August grants amnesty and reduction in sentence of certain crimes and infractions.

Decree No. 46 504 of 27 August approves the Regulations of the Educational Health Services in the overseas provinces.

Decree No. 46 548 of 23 September promulgates the General Rules of the Retirement or Social Security Trust Funds (Caixas de Reforma ou de Previdencia).

Notification No. 21 546 of 23 September sets up the National Trust Fund of Pensions (Caixa Nacional de Pensões) intended to protect the beneficiaries, the members of their families, of the Social Security Trust Funds (caixas de previdencia) and the Family Allowance funds in the event of old age, illness and death.

Legislative Decree No. 46 557 of 28 September regulates the granting, by Portuguese authorities, of passports to foreign refugees who may be residing regularly in Portuguese territory, or may desire to enter Portuguese territory with the objective of fixing residence there, and show that they are not able to obtain a passport of another country.

Legislative Decree No. 46 621 of 27 October creates the individual bulletin of health, and regulates its passage through the services of the Ministry of Health and Assistance and of the other Ministries or private entities which collaborate with them in carrying out programmes of vaccination.

Legislative Decree No. 46 628 of 5 November inserts dispositions destined to facilitate the execution of a national programme of vaccination

[1] Note furnished by the Government of Portugal.

and of a complementary programme of sanitary education.

Decree No. 46747 of 15 December simplifies some of the procedural steps as well as the conditions for the issuing and granting of passports.

Decree No. 46748 of 15 December regulates the entry and exit from Portuguese territory of Portuguese citizens and of foreigners.

II. JUDICIAL DECISIONS

Judgement of the Supreme Court of Justice, of 24 February, published in the *Bulletin of the Ministry of Justice,* No. 144, page 109.

Specifying that the appointment of a state-paid defence advocate in cases where there is no defence advocate chosen by the party concerned, as laid down in article No. 49 of Legislative Decree No. 35 007 of 13 October 1945, must in correctional procedures and procedures initiated by correctional police, be made at the beginning of the trial pleadings and judgements.

Judgement of the Supreme Court of Justice, of 24 February, in the same *Bulletin,* at page 120.

Lays down that the meaning of the precepts in articles 107 and 108 of the Penal Code is to be found in the attenuation of penal responsibility of minor accused persons by reason of semi-imputability. Such precepts establish a proportional reduction of penalties, a fact that signifies that they set limitations on the highest penalties applicable, keeping the judge to act well on this side of them without the law having to impose a proportional arithmetical reduction in the abstract form.

Judgement of the Supreme Court of Justice, of 3 March, in the *Bulletin of the Ministry of Justice,* No. 145, page 339.

The extraordinary remedy of *habeas corpus* is in place when the case is one of deprivation of actual and effective liberty illegal for any of the reasons mentioned in clauses (*a*) and (*d*) of the only paragraph of article 7 of Legislative Decree No. 35 043 of 20 October 1954.

Judgement of the Supreme Court of Justice of 2 June 1965, in the same *Bulletin,* No. 148, page 159.

Moral losses incurred as a result of road accident are to be indemnified.

Judgement of the Supreme Court of Justice, of 21 June, in the same *Bulletin,* No. 149, page 253.

Detention of a person in jail is illegal if after the expiry of the time period allowed for preventive detention it is continued on the basis of a possible measure of security which is still not applied. In such a case *habeas corpus* must be allowed.

ROMANIA

CONSTITUTION OF THE SOCIALIST REPUBLIC OF ROMANIA [1]

TITLE I

THE SOCIALIST REPUBLIC OF ROMANIA

Art. 1. Romania is a socialist republic.

The Socialist Republic of Romania is a sovereign, independent and unitary State of the working people of the towns and villages. Its territory is inalienable and indivisible.

Art. 2. All power in the Socialist Republic of Romania belongs to the people, who are free and the masters of their destiny.

The power of the people is founded on the worker-peasant alliance. In close union, the working class—the leading class of society—the peasantry, the intellectuals and the other categories of working people, without distinction as to nationality, shall build the socialist system, creating the necessary conditions for the transition to communism.

Art. 3. In the Socialist Republic of Romania, the leading political force of the whole of society shall be the Romanian Communist Party.

Art. 4. The people, the sovereign holder of power, shall exercise it through the Grand National Assembly and through the people's councils, organs elected by universal, equal and direct suffrage and by secret ballot.

The Grand National Assembly and the people's councils shall constitute the basis of the entire system of organs of the State.

The Grand National Assembly shall be the supreme organ of State power, under whose guidance and supervision all other organs of the State shall carry on their activity.

Art. 5. The national economy of Romania is a socialist economy, based on socialist ownership of the means of production.

In the Socialist Republic of Romania, the exploitation of man by man has been abolished for ever and the socialist principle of distribution according to the quantity and quality of work is being applied.

Work shall be a duty of honour for every citizen of the country.

Art. 6. Socialist ownership of the means of production is either State ownership, in the case of property belonging to the people as a whole, or co-operative ownership, in the case of the property belonging to each co-operative organization.

Art. 7. Underground resources of every description, mines, State lands, forests, waters, sources of natural energy, factories and mills, banks, State farms, machine and tractor stations, lines of communication, State transport and telecommunication facilities, State-owned buildings and dwellings and the material basis of State social and cultural institutions shall belong to the people as a whole and shall be State property.

Art. 8. Foreign trade shall be a State monopoly.

Art. 9. The land of agricultural production co-operatives and the livestock, implements, installations and structures belonging to them shall be co-operative property.

The plot of land which, in accordance with the statutes of the agricultural production co-operatives, is used by the family farms of co-operating peasants shall constitute co-operative property.

The dwelling house and farm outbuildings, the land on which they stand and, subject to the statutes of the agricultural co-operatives, the production live-stock and minor agricultural equipment shall constitute the personal property of the co-operative peasants.

The implements, machinery, installations and structures of handicraft co-operatives and of consumer co-operatives shall be co-operative property.

Art. 10. Agricultural production co-operatives, a socialist form of agricultural organization, secure the necessary conditions for intensive cultivation of the soil and for the application of advanced science and contribute, by increasing output, to the development of the national economy and to a continuous rise in the level of living of the peasantry and of the people as a whole.

The State shall support agricultural production co-operatives and shall protect their pro-

[1] Romanian text in *Buletinul Oficial al Republicii Socialiste România* No. 1, of 21 August 1965. English translation from the Romanian text by the United Nations Secretariat.

perty. The State shall also support other co-operative organizations and protect their property.

Art. 11. Under conditions of co-operatively organized agriculture, the State shall guarantee to peasants who cannot join agricultural production co-operatives the ownership of the land which they themselves and their families cultivate, of the implements used for that purpose and of the draught animals and production livestock.

Similarly, handicraft workers shall be guaranteed the ownership of their own workshops.

Art. 12. Land and structures shall not be expropriated save for the purpose of works in the public interest and against payment of fair compensation.

Art. 13. In the Socialist Republic of Romania, all State activity shall have as its purpose the development of the socialist system and the prosperity of the socialist nation, a continuous increase in the people's material and cultural well-being, the preservation of human freedom and dignity and the many-sided affirmation of the human personality.

For this purpose, the Romanian socialist State shall:

Organize, plan and guide the national economy;

Protect socialist property;

Guarantee the full exercise of the rights of citizens, ensure socialist legality and defend the rule of law;

Develop education at all levels, secure the necessary conditions for the development of science, the arts and culture, and protect public health;

Provide for the defence of the country and organize its armed forces;

Organize relations with other States.

Art. 14. The Socialist Republic of Romania shall maintain and develop relations of friendship and fraternal collaboration with the socialist countries in the spirit of socialist internationalism, promote relations of collaboration with countries having another social and political system, and campaign in international organizations to secure peace and understanding among the peoples.

The foreign relations of the Socialist Republic of Romania shall be based on the principles of respect for sovereignty and national independence, equal rights, mutual advantage and non-intervention in domestic affairs.

...

TITLE II

THE FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

Art. 17. Citizens of the Socialist Republic of Romania, without distinction as to nationality, race, sex or religion, shall have equal rights in all fields of economic, political, legal, social and cultural activity.

The State shall guarantee the equal rights of citizens. No restriction of these rights and no discrimination in the exercise thereof on grounds of nationality, race, sex or religion shall be permitted.

Any manifestation aimed at establishing such restrictions, nationalist-chauvinist propaganda and incitement to racial or national hatred shall be punishable by law.

Art. 18. In the Socialist Republic of Romania, citizens shall have the right to work. Every citizen shall be afforded the opportunity to carry on, in keeping with his training, an activity in the economic, administrative, social or cultural field, remunerated according to its quantity and quality. Equal work shall earn equal pay.

Measures for the protection and safety of labour and special measures to protect working women and young workers shall be adopted by law.

Art. 19. Citizens of the Socialist Republic of Romania shall have the right to leisure.

The right to leisure shall be guaranteed to the working people by setting an upper limit of eight hours to the working day and by instituting weekly rest and paid annual leave.

In sectors in which work is arduous or very arduous, the length of the working day shall be reduced below eight hours without any reduction in pay.

Art. 20. Citizens of the Socialist Republic of Romania shall have the right to material security in old age, sickness or incapacity for work.

The right to material security shall be realized for manual and non-manual workers through pensions and sickness benefits awarded under the State social insurance system, and for the members of co-operative organizations or other public organizations through the forms of insurance provided by those organizations. The State shall provide medical care through its public health institutions.

Paid maternity leave shall be guaranteed.

Art. 21. Citizens of the Socialist Republic of Romania shall have the right to education.

The right to education shall be secured by compulsory general education, by the provision of education at all levels free of charge and by the system of State scholarships.

Education in the Socialist Republic of Romania shall be State education.

Art. 22. In the Socialist Republic of Romania, the co-inhabiting nationalities shall be guaranteed the free use of their mother tongue and books, newspapers, magazines, theatres and education at all levels in their own language. In districts inhabited also by a population of other than Romanian nationality, all organs and institutions shall also use the language of that nationality in speech and in writing and shall appoint officials

from among that population or from among other citizens conversant with the language and way of life of the local population.

Art. 23. In the Socialist Republic of Romania women shall have equal rights with men.

The State shall protect marriage and the family and shall defend the interests of mothers and children.

Art. 24. The Socialist Republic of Romania shall secure for young people the conditions necessary to the development of their physical and intellectual aptitudes.

Art. 25. Citizens of the Socialist Republic of Romania shall have the right to elect and to be elected to the Grand National Assembly and the people's councils.

The vote shall be universal, equal, direct and secret. All citizens who have reached the age of eighteen years shall have the right to vote.

Citizens who have the right to vote and who have reached the age of twenty-three years can be elected as deputies to the Grand National Assembly and to the people's councils.

The right to nominate candidates shall be secured to all organizations of the working people: organizations of the Romanian Communist Party, trade unions, co-operatives, young people's and women's organizations, cultural associations and other mass and public organizations.

The electors shall have the right to recall a deputy at any time, by the same procedure whereby he was nominated and elected.

The following shall not have the right to elect and to be elected: the insane, the mentally deficient and persons deprived of these rights for a period fixed by the sentence of a court.

Art. 26. The most advanced and conscious citizens from among the workers, peasants, intellectuals and other categories of working people shall unite in the Romanian Communist Party, the highest form of organization of the working class and its vanguard detachment.

The Romanian Communist Party shall faithfully express and serve the aspirations and vital interests of the people, play the leading role in all fields of socialist construction, and guide the activity of mass and public organizations and of State organs.

Art. 27. Citizens of the Socialist Republic of Romania shall have the right to associate in trade union, co-operative, young people's, women's, social and cultural organizations, unions of creative artists, scientific, technical and sports associations and other public organizations.

The State shall support the activity of mass and public organizations, create the necessary conditions for the development of the material basis of such organizations and protect their property.

Mass and public organizations shall ensure broad participation by the masses of the people in the political, economic, social and cultural life of the Socialist Republic of Romania and in the exercise of public supervision—an expression of the democratic character of the socialist system. Through mass and public organizations the Romanian Communist Party shall forge an organized link with the working class, peasantry, intellectuals and other categories of working people, and mobilize them in the struggle to complete the building of socialism.

Art. 28. Citizens of the Socialist Republic of Romania shall be guaranteed freedom of speech, of the Press, of assembly, of meeting and of demonstration.

Art. 29. The freedom of speech, of the Press, of assembly, of meeting and of demonstration shall not be used for purposes hostile to the socialist system and to the interests of the working people.

Any association of a fascist or anti-democratic character shall be prohibited. Participation in any such association and propaganda of a fascist or anti-democratic character shall be punishable by law.

Art. 30. Freedom of conscience shall be guaranteed to all citizens of the Socialist Republic of Romania.

Everyone shall be free to share or not to share a religious belief. Freedom to practise religious worship shall be guaranteed. Religious sects shall be free to organize and to function. The mode of organization and functioning of religious sects shall be regulated by law.

The school shall be separated from the church. No religious persuasion, congregation or community shall be permitted to open or maintain any teaching institutions other than special schools for the training of ministers of religion.

Art. 31. Citizens of the Socialist Republic of Romania shall be guaranteed inviolability of the person.

No person shall be detained or arrested in the absence of evidence or serious indications that he has committed an offence known to and punishable by law. The investigating authorities may order the detention of a person for a period not exceeding twenty-four hours. No one shall be arrested except on the basis of warrant of arrest issued by a court or procurator.

The right to defence shall be guaranteed for the full duration of proceedings.

Art. 32. The home shall be inviolable. No one shall enter a person's dwelling without that person's consent, save in the cases and under the conditions specified by law.

Art. 33. The secrecy of correspondence and of telephone conversations shall be guaranteed.

Art. 34. The right of petition shall be guaranteed. State organs shall be bound to deal with the petitions of citizens concerning personal or public rights and interests.

Art. 35. Any person whose rights have been violated by the illegal act of a State organ may

request the competent organs, under the conditions prescribed by law, to annul the act and make good the damage.

Art. 36. The right to own personal property shall be protected by law.

The right to own personal property may apply to income and savings derived from work, to the dwelling house, the outbuildings and the land on which they stand, and to articles of use and personal comfort.

Art. 37. The right of succession shall be protected by law.

Art. 38. The Socialist Republic of Romania shall grant the right of asylum to citizens of a foreign country who are persecuted for their activity in defence of the interests of the working people or for participation in the struggle for national liberation or in the defence of peace.

Art. 39. Every citizen of the Socialist Republic of Romania shall be in duty bound to uphold the Constitution and the law, to protect socialist property, and to contribute to the consolidation and development of the socialist system.

Art. 40. Military service in the ranks of the armed forces of the Socialist Republic of Romania shall be compulsory and shall constitute a duty of honour for citizens of the Socialist Republic of Romania.

Art. 41. The defence of the homeland shall be the sacred duty of every citizen of the Socialist Republic of Romania. Violation of the military oath, treason to the homeland, desertion to the enemy and action detrimental to the defensive capacity of the State shall constitute the most serious crimes against the people and shall be punishable by law with the utmost severity.

TITLE III

THE SUPREME ORGANS OF STATE POWER

THE GRAND NATIONAL ASSEMBLY

Art. 42. The Grand National Assembly, the supreme organ of State power, shall be the sole legislative organ of the Socialist Republic of Romania.

Art. 43. The Grand National Assembly shall have the following main functions:

1. To adopt and amend the Constitution of the Socialist Republic of Romania;

2. To regulate the electoral system;

3. To adopt the State plan for the national economy, the State budget and the general account at the close of the budgetary year;

4. To organize the Council of Ministers, the Ministries and the other central organs of State administration;

5. To regulate the organization of the judiciary and the Procurator's Office;

6. To lay down rules for the organization and functioning of the people's councils;

7. To establish the administrative organization of the territory;

8. To grant amnesty;

9. To ratify and denounce international treaties which involve the amendment of legislation;

10. To elect and recall the State Council;

11. To elect and recall the Council of Ministers;

12. To elect and recall the Supreme Court and the Procurator General;

13. To exercise general supervision over the application of the Constitution. The Grand National Assembly alone shall rule on the constitutionality of legislation;

14. To supervise the activity of the State Council;

15. To supervise the activity of the Council of Ministers, of the Ministries and of the other central organs of State administration;

16. To hear reports concerning the activity of the Supreme Court and to supervise its guiding decisions;

17. To supervise the activity of the Procurator's Office;

18. To exercise general supervision over the activity of the people's councils;

19. To lay down the general line of foreign policy;

20. To proclaim, in the interest of the country's defence, of public policy or of State security, a state of emergency in certain localities or throughout the territory of the country;

21. To order partial or general mobilization;

22. To declare a state of war. A state of war may be declared only in the event of armed aggression directed against the Socialist Republic of Romania or against another State towards which the Socialist Republic of Romania has obligations of mutual defence assumed under international treaties, if a situation has arisen for which the obligation to declare a state of war has been laid down;

23. To appoint and remove the Supreme Commander of the Armed Forces.

Art. 44. Deputies to the Grand National Assembly shall be elected from electoral districts having the same number of inhabitants. The electoral districts shall be delimited by decree of the State Council.

One deputy shall be elected in each electoral district.

The Grand National Assembly shall be composed of 465 deputies.

Art. 45. The Grand National Assembly shall be elected for a legislative term of four years, reckoned from the date of termination of the mandate of the previous Grand National Assembly.

The mandate of the Grand National Assembly cannot terminate before the expiry of the term for which it was elected.

If it finds that circumstances prevail which make it impossible to hold elections, the Grand National Assembly may decide to prolong its mandate for the duration of such circumstances.

...

THE STATE COUNCIL

Art. 62. The State Council of the Socialist Republic of Romania shall be the supreme organ of State power having continuous functions, subordinate to the Grand National Assembly.

...

Art. 65. The State Council shall be elected by the Grand National Assembly from among its members, at its first session, for the duration of the legislative term. The State Council shall serve until the election of the new State Council in the next legislative term.

...

TITLE IV

THE CENTRAL ORGANS OF STATE ADMINISTRATION

Art. 70. The Council of Ministers shall be the supreme organ of State administration.

The Council of Ministers shall exercise general guidance over executive activity throughout the territory of the country....

Art. 71. The Council of Ministers shall be elected by the Grand National Assembly, at its first session, for the duration of the legislative term. The Council of Ministers shall serve until the election of the new Council of Ministers in the next legislative term.

...

TITLE V

THE LOCAL ORGANS OF STATE POWER AND THE LOCAL ORGANS OF STATE ADMINISTRATION

Art. 79. The people's councils shall be the local organs of State power in the regions, districts, towns and communes.

The people's councils shall guide local activity, ensuring the economic, social, cultural and local governmental development of the territorial administrative units in which they have been elected, the maintenance of law and order, socialist legality and the protection of the rights of citizens.

The people's councils shall organize the participation of citizens in dealing with State and public affairs at the local level.

...

TITLE VI

THE JUDICIAL ORGANS

Art. 94. In the Socialist Republic of Romania, justice shall be administered by the Supreme Court, regional courts, people's courts and military courts established in accordance with the law.

Art. 95. By their judiciary activity, the courts shall defend the socialist system and the rights of persons, educating the citizens in the spirit of respect for the law.

In imposing penalties, the courts shall seek to reform and re-educate offenders and to prevent the commission of new offences.

...

Art. 98. The Supreme Court shall be elected by the Grand National Assembly, at its first session, for the duration of the legislative term.

The Supreme Court shall serve until the election of the new Supreme Court in the next legislative term.

...

TITLE VII

THE ORGANS OF THE PROCURATOR'S OFFICE

Art. 105. The Procurator's Office of the Socialist Republic of Romania shall keep watch over, compliant with the law by the Ministries and other central organs of State administration, the local organs of State administration, the penal prosecuting authorities, the courts, civil servants and other citizens.

...

Art. 107. The Procurator General shall be elected by the Grand National Assembly, at its first session, for the duration of the legislative term and shall serve until the election of the new Procurator General at the first session of the next legislative term.

The procurators shall be appointed by the Procurator General.

...

TITLE IX

FINAL PROVISIONS

Art. 113. This Constitution shall enter into force on the date of its adoption.

Art. 114. The Constitution of 24 September, 1952 [2] and any provisions of laws, decrees and other normative acts which are contrary to the provisions of this Constitution shall be abrogated on the same date.

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[2] For extracts from the Constitution of 24 September 1952, see the *Yearbook on Human Rights for 1952*, pp. 238-242.

LEGISLATION AND JUDICIAL PRACTICE RELATING TO HUMAN RIGHTS[3]

A. TEXTS OF OR EXTRACTS FROM INSTRUMENTS ADOPTED DURING 1965

I. Embodiment and guarantee of human rights by the new Constitution (articles 1-30 of the Universal Declaration of Human Rights).

The new Constitution of the Socialist Republic of Romania, adopted on 21 August 1965 (see *Official Bulletin of the Socialist Republic of Romania,* No. 1, Part I, of 21 August 1965), guarantees the fundamental rights and freedoms of Romanian citizens.

II. The State budget of the Socialist Republic of Romania for 1965 adopted under Act No. 1, 1964 (see *Official Bulletin of the Grand National Assembly,* No. 24, of 30 December 1964), reflects the integrated development of the national economy and is designed to ensure the realization of the economic, social and cultural rights of the population.

The State budget, which includes the social security budget, provides for revenue of 83,250.5 million lei and for expenditure of 82,250.5 million lei. The budgets of local State bodies, namely the people's councils, provide for expenditure and revenue of 16,150.9 million lei.

Revenue from individual taxation represents only about 5.7 per cent of the total 1965 budget; the balance, namely, 94.3 per cent is derived from State and co-operative enterprises and economic organizations.

On the expenditure side, 63,139 million lei (about 63 per cent of the total expenditure under the State and people's councils' budgets) are allocated for financing the national economy, and 22,075.9 million lei (over 22 per cent of total expenditure) for financing social and cultural activities (State social insurance, education, science and culture, health, social security, recreation and sports, family allowances and State children's allowances); this represents an increase of 1,440.9 million lei over the previous year's figure.

A sum of 2,089.7 million lei is allocated under the budget for the executive and administrative machinery of the State, the State prosecutor's offices and the judicial system, and 4,540 million lei for national defence.

III. Development and co-ordination of scientific research work with a view to economic, social and cultural progress (articles 22, 25 (1) and 27 of the Universal Declaration of Human Rights).

Act No. 2 of 23 December 1965, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 21, Part I (23 December 1965) provides for the establishment of the National Scientific Research Council, a body designed to promote scientific research work in Romania.

IV. Labour protection (art. 23 (1) of the Universal Declaration of Human Rights).

Act No. 5 on labour protection was adopted on 23 December 1965 and is published in the *Official Bulletin of the Socialist Republic of Romania,* No. 21 (23 December 1965).

The new Act, which was rendered necessary by the rate of industrialization in Romania, achieves considerable progress in the field of labour protection. The central specialized body in this field, namely, the State Labour Protection Committee, set up by Act No. 5 of 23 December 1965, has been entrusted with important tasks in the field of labour protection, in which it plays a supervisory and controlling role throughout the country and draws up, together with the Ministry of Health and Social Security, mandatory State labour protection standards.

Reference should also be made to the progress achieved as a result of increasing the responsibility of those whose task it is to apply labour protection measures; vocational training programmes have also been adapted to current requirements in this field; all industrial equipment projects have to include labour protection measures; steps have been taken to ensure the creation and rational utilization of labour protection funds.

The new provisions permit the mobilization of the material resources necessary to prevent labour accidents and occupational diseases, and take all relevant factors into account.

V. Assistance to persons temporarily incapacitated for work (for treatment and restoration of health); maternity and death benefits (art. 22 and art. 25 (1) of the Universal Declaration of Human Rights).

Decision No. 880 of 21 August 1965 of the Council of Ministers, published in *Collected Decisions and Regulations of the Council of Ministers,* No. 33, of 21 August 1965, concerning the provision of material assistance by State social security services.

The number of cases in which persons are entitled to material assistance from State and social security services has increased as a result of the introduction of the new regulations, as has the total amount of this assistance.

Entitlement to material assistance in the cases covered by the above Decision is subject neither to contributions nor any other obligations on the part of the beneficiaries. Assistance is provided in its entirety from the resources made available

[3] Note communicated by the Government of the Socialist Republic of Romania.

to the State social security services, namely, from the State budget.

VI. New regulations concerning the right to work and retirement of persons whose supplementary sentence entails deprivation of civic rights or certain disabilities (articles 22, 23 (1) and art. 25 (1) of the Universal Declaration of Human Rights).

Decree No. 421 of 9 July 1965, published in the *Official Bulletin,* No. 22, of 9 July 1965, states:

"Art. I. The Penal Code is amended as follows:

"1. Art. 58 shall read as follows:

"Art. 58. Deprivation of civic rights shall entail:

"1. Loss of the right to elect or to be elected to State bodies or to elective offices in State or collective organizations.

"2. Loss of the right to hold an office which includes the function of representing the State.

"3. Loss of the right to act as guardian or trustee.

"2. Art 59 shall read as follows:

"Art. 59. A person who is placed under certain disabilities is denied the exercise of one or more of the rights referred to in art. 58. They shall be specified in the sentence.

"Art. II. Judicial decisions entailing the supplementary penalty of deprivation of civic rights or certain disabilities handed down before the entry into force of this Decree shall be applied only insofar as they relate to the loss or suspension of the civic rights referred to in art. 58 as amended.

"The provisions of these decisions relating to the loss or suspension of the right to hold any public office shall be carried out only in respect of offices whose holder is called upon to represent the State or offices previously held by the convicted person if the latter committed the offence owing to incompetence, insufficient training or for other reasons rendering him unfit to hold such office.

"Similarly, as soon as this Decree enters into force, any provisions resulting from these decisions relating to the suspension or loss of retirement benefits shall no longer be carried out; the provisions set forth in the regulations in force relating to retirement benefits shall be applicable in these cases.

"The provisions of this article are applicable, *mutatis mutandis,* to sentences entailing deprivation of civic rights or certain disabilities handed down as a supplementary penalty."

Under article 25 of the Penal Code, the Court may, in addition to the preventive penalties carried out, and even if not required to do so under the law, hand down the supplementary penalty entailing deprivation of civic rights for 3 to 10 years in the case of crimes, and the supplementary penalty entailing certain disabilities for 1 to 6 years.

Either form of supplementary penalty shall become applicable from the time the sentenced person has served his term of imprisonment; in the event of limitation, it shall become applicable on the date that the limitation becomes operative.

The Court may hand down these supplementary penalties only if the principal sentence entails imprisonment for a period of over 6 months.

The previous text of art. 59 of the Penal Code stated that "application of certain disabilities" meant suspension of the exercise of one or more of the rights referred to in art. 59, and that the Court could, in certain cases, decide that the person concerned should lose these rights.

Under the present provisions, introduced by Decree No. 421, persons who receive the supplementary penalty of deprivation of civic rights may hold any position with the exception of elective offices in State or collective organizations and offices which include the function of representing the State.

Nor does deprivation of civic rights any longer entail the loss of retirement benefits. The extent of the rights which may be suspended by the application of a supplementary penalty entailing certain disabilities has also been limited by the provisions of new art. 59 of the Penal Code.

VII. Guarantee of the right to education (art. 26 (1) of the Universal Declaration of Human Rights).

1. Decision No. 767 of the Council of Ministers, concerning the extension of the rule that school books should be supplied free of charge to secondary school students, was adopted on 31 August 1965.

In accordance with article 1 of this Decision:

"Art. 1. From the 1965-1966 school year, school books shall be provided free of charge to students attending day courses at general secondary schools (ninth to twelfth grades) and teacher training schools, as well as to the instructors at these schools.

"The provisions of the above paragraph are also applicable to the students and instructors at specialized secondary schools as from the date of establishment of these schools."

Before 1965-1966, school books were provided free of charge only to children receiving compulsory general education (first to eighth grades); secondary school students (ninth to twelfth grades) did not receive free school books.

2. The University of Craiova was established by Decision No. 894 of 10 September 1965 of the Central Committee of the Romanian Communist Party and of the Council of Ministers (see the *Official Bulletin of the Socialist Republic of Romania,* No. 2, Part I, of 10 September 1965).

The University of Craiova, set up under the above Decision, is the fifth university in the Socialist Republic of Romania. In addition to these five universities, there are 43 higher educational establishments in Romania.

During the 1965-1966 school year these universities and higher educational establishments were attended by 130,614 students.

3. Decision No. 106 of 10 March 1965 of the Council of Ministers on the organization and functioning of the general educational system for handicapped children (sensory, physical or mental deficiencies); see No. 6 of the *Collected Decisions and Regulations of the Council of Ministers* of 10 March 1965 which states, among other things:

"Art. 1. General education for handicapped children (suffering from curable physical, sensory and mental deficiencies) is organized in different ways in the following educational establishments:

A. Nursery schools for deaf, hypacousic, blind and mentally deficient children of three to seven years of age;

"B. General schools, as follows:

(*a*) schools for deaf children (nine years' schooling);

(*b*) schools for hypacousic children, category I (nine years' schooling);

(*c*) schools for hypacousic children, category II (nine years' schooling);

(*d*) schools for blind children (nine years' schooling);

(*e*) schools for amblyopic children (nine years' schooling);

(*f*) schools for children with motor deficiencies (nine years' schooling);

(*g*) schools for mentally deficient children (eight years' schooling).

"General education for children in institutions operated by the Ministry of Health and Social Security (school homes and nursing homes for tubercular children and those suffering from the effects of poliomyelitis) is provided by the Ministry of Education.

"The school homes operated by the Ministry of Health and Social Security may be attended, on a favourable medical opinion, by children suffering from serious deficiencies caused by epilepsy and cardiopathy.

"C. Secondary schools, as follows:

(*a*) secondary schools for hypacousic children, category I (five years' schooling);

(*b*) secondary schools for blind children (five years' schooling);

(*c*) secondary schools for amblyopic children (five years' schooling);

(*d*) secondary schools for children with motor deficiencies (four years' schooling)."

...

Art. 2. Inter-school logopedic centres are available for children with serious speech defects attending pre-school courses, general education schools and vocational schools.

These bodies are organized, depending on local requirements, in the administrative centres of regions and districts and in workers' settlements, in accordance with annual educational plans.

...

Art. 5. Pupils who have completed the courses offered at general schools for deaf or hypacousic children, category II, and mentally deficient children may attend vocational schools of the type corresponding to their disability.

Pupils who have completed the courses offered at general schools for hypacousic children, category I, blind children, amblyopic children, or children with motor deficiencies, as well as those who have attended general schools operated by the Ministry of Health and Social Security of a standard equivalent to that of the general school may attend vocational schools or general secondary schools of the type corresponding to their disability.

Places for pupils who have attended a general school for deficient children are reserved under the educational plan in special and technical schools subordinate to the Ministry of Health and Social Security.

...

Art. 8. Handicapped children attending nursery schools and general schools subordinate to the peoples' councils are entitled to the following throughout the period of their education:

(*a*) free schooling;

(*b*) free school books for students at general schools and specific text books for students attending general secondary schools;

(*c*) specific special free school equipment, audio-visual equipment and artificial limbs, within the limits specified by the Ministry of Education in agreement with the Ministry of Finance;

(*d*) meals in the canteen within the limits of the statutory allocation for this purpose;

(*e*) lodging in homes for children from other areas or from the same areas in the cases specified and under the conditions laid down in the regulations referred to in article 17 of this Decision;

(*f*) free round-trip transport during school holidays by train, second class coach or buses belonging to regional transport enterprises if the student is domiciled in an area other than that in which the general or nursery school is situated.

Children with parents whose total income from salaries or pensions does not exceed 2,000 lei are entitled to free transport.

Handicapped children and children living in school homes operated by the Ministry of Health and Social Security shall enjoy, in addition to the rights specified in this article, those to which they are entitled under regulations in force on the date of this Decision.

...

Art. 13. With a view to reducing the extent of and compensating for deficiencies, institutions for handicapped children shall be provided with the necessary teaching aids, typhlotechnical acoustical equipment, physiotherapeutic equipment and artificial limbs; they shall also be supplied with medical equipment and any other equipment required in connexion with their activities. Each unit shall be equipped within the limits laid down in the annual budget.

VIII. Health protection (art. 25 (1) of the Universal Declaration of Human Rights).

Decree No. 974 of 30 December 1965 on the establishment, organization and operation of the State Health Inspection Service, published in the *Official Gazette of the Socialist Republic of Romania,* No. 24, Part I (30 December 1965).

In accordance with article 1 of this Decree, the State Health Inspection Service is responsible for supervising, carrying out and ensuring the uniform application of health regulations and instructions and measures for the control of epidemics; it is also required to investigate factors likely to endanger public health.

Art. 2 of this Decree states that health instructions and measures for the control of epidemics shall be drawn up by the Ministry of Health and Social Security, and shall be compulsory throughout Romania for individuals and bodies corporate.

The powers, functions and organization of the State Health Inspection Service are set forth in detail in Decree No. 974.

IX. Guarantee of the right of personal freedom in the case of the confinement of the dangerously insane.

Decree No. 12 of 27 January 1965 concerning the medical treatment of the dangerously insane, published in the *Official Bulletin of the Grand National Assembly,* No. 4, of 27 January 1965, establishes judicial procedure relating to their confinement in medical psychiatric institutions.

Confinement for purposes of medical treatment may be requested only by the Public Prosecutor, acting on the opinion of a medical commission, and can be effected only as a result of a judicial decision after the parties concerned have been heard.

Prior to the adoption of Decree No. 12 (1965), the confinement of the dangerously insane was ordered by administrative bodies.

B. EXTRACT FROM THE REPORT OF THE CENTRAL STATISTICAL BOARD

The data contained in the Report of the Central Statistical Board on the development of the national economy of the Socialist Republic of Romania in 1965 and for the period 1960-1965 reflect the substantial progress made in all branches of economic and social activity, a steady rise in levels of living and general progress by society as a whole.

1. Industrial production

In 1965, industrial production increased by 13.1 per cent over the 1965 level, and was 125 per cent higher than in 1959. During the 1960-1965 period, the average annual rate of growth was 14.5 per cent instead of the 13 per cent forecast for this period.

2. Agricultural production

Grain production in 1965 amounted to 12.6 million tons, and broke all previous records in Romania. Total agricultural production per 100 hectares of land during the 1960-1965 period was 66 per cent greater than that in the 1949-1959 period.

At the end of 1965, Romania had about 81,000 tractors, 66,000 seeders and 36,000 combine harvesters. The average arable area per tractor declined from 270 hectares in 1959 to 122 hectares in 1965.

3. Goods turnover

In 1965, goods sold through the State and co-operative trade system amounted to 67,600 million lei, or 7.3 per cent more than during the previous year.

4. Improvements in living conditions

The national income rose at an average annual rate of 9.1 per cent during the 1960-1965 period. The number of wage-earners employed in the national economy was 4.3 million, an increase of 1,250,000 over 1959.

In 1965, the cash wages of the urban and rural population were 80 per cent higher than in 1959. During the same period the wage fund doubled and real wages increased by 35 per cent.

In addition to this increase in wages paid for work done, the population benefited from social consumption funds, which also increased. During the 1960-1965 period, expenditure under the State budget for social and economic activities amounted to 108,000 million lei; actual expenditure during 1965 exceeded allocations by 9 per cent.

During the 1960-1965 period, about 270,000 apartments were built with State funds and made available for occupancy. During the same period, private citizens built about 530,000 dwellings, mostly in rural areas, at their own expense.

From 1960 to 1965, 26,000 classrooms were built for general and secondary education and for vocational training. Students' homes with a capacity of 25,400 were built during this period. The 8-year period of education has been made universal. Since the 1960-1961 school year, children in the first to eighth grades (general education) have been provided with school books free of charge; students attending secondary schools have also, since the 1965-1966 school year, received free school books.

During the 1965-1966 school year, the number of pupils and students of all grades was 3.7 mil-

lion, or 50 per cent more than in 1959-1960; this figure represents about one-fifth of the country's total population.

From 1960-1965, 77,700 engineers, economists, doctors, teachers and other specialists were trained at higher educational establishments for work in the national economy; 383,000 technicians and skilled workers were trained at technical and vocational schools.

Considerable sums were invested with a view to a steady expansion of physical facilities for cultural activities. During the 1960-1965 period, 54 cinemas were opened in the towns, 3,800 cinema projection halls established in villages, and 1,570 cultural centres, 7 major television stations and 16 broadcasting stations began operation.

The number of hospital beds increased by 13,900 between 1960 and 1965.

In 1965, over 720,000 persons spent their holidays and received treatment at health and seaside resorts.

Electricity was supplied to a further 4,500 villages during the 1960-1965 period.

C. INTERNATIONAL AGREEMENTS

I. Bilateral Agreements

1. Agreement between the Government of the Socialist Republic of Romania and the Government of the People's Republic of Albania concerning co-operation in the field of social problems, approved by Decision No. 865 (1965) of the Council of Ministers published in *Collected Decisions and Regulations of the Council of Ministers,* No. 1, of 18 January 1965 (art. 22, art. 23 (1) and art. 25 (1) of the Universal Declaration of Human Rights).

The Agreement states that the citizens of each Contracting Party, as well as members of their families, domiciled in the territory of the other Contracting Party shall be entitled to the same treatment as the citizens of the latter in all matters relating to social insurance and security and labour regulations. The Agreement has been concluded for a period of five years and is extended automatically for a further period of five years unless denounced by one of the Contracting Parties at least six months before the end of the five-year period.

2. Agreement concerning co-operation in the fields of science, education, health, culture and sports, between the Socialist Republic of Romania and the Republic of Guinea, ratified by Decree No. 196, published in the *Official Bulletin,* No. 14 (24 April 1965) (art. 19, art. 22, art. 26 (1), and art. 27 (1) of the Universal Declaration of Human Rights).

Under this Agreement, the Contracting Parties undertake to develop and strengthen their cultural co-operation, to inform one another of their achievements in the fields of science, education, art, literature, health protection and sports, to offer to the young persons of the other country scholarships to universities and higher educational establishments, to encourage co-operation in the fields of radio broadcasting, cinema and the press, and to facilitate the translation and editing, in their own country, of the scientific and cultural works of the other country. The Agreement has been concluded for a period of two years and shall be automatically extended for a similar period unless the Contracting Parties announce their intention of denouncing it a least three months before the expiry of this period.

3. Agreement for cultural and scientific co-operation between the Government of the Socialist Republic of Romania and the Government of the Polish People's Republic, ratified by Decree No. 195, published in the *Official Bulletin,* No. 14, of 24 April 1965 (art. 19, art. 26 (1) and art. 27 (1) of the Universal Declaration of Human Rights).

The Agreement states that the Contracting Parties shall develop and strengthen multilateral co-operation between the cultural and scientific institutions of the two countries, particularly through exchanges of experts in scientific fields, of students, artists, theatrical groups, books, scientific publications and works, as well as by the dissemination of works of art and other cultural achievements. A joint Romanian-Polish commission has been set up to prepare programmes for cultural co-operation with a view to the implementation of these provisions.

The Agreement has been concluded for a period of five years; it shall be extended at the end of each period for a further five years unless denounced by one of the Contracting Parties six months before the expiry of this period.

4. Cultural Agreement between the Government of the Socialist Republic of Romania and the Government of the French Republic, approved by Decision No. 202 of the Council of Ministers, published in the *Collected Decisions and Regulations of the Council of Ministers,* No. 8, of 26 March 1965 (art. 19, art. 26 (1) and art. 27 of the Universal Declaration of Human Rights).

Under this Agreement, the Contracting Parties undertake to develop co-operation in the fields of culture, education, science, the arts, information media, sports and tourism, to pay special and continuing attention to the teaching of the Romanian language and civilization in France and the French language and civilization in Romania, to offer scholarships to the students and technicians of the other country, and to study new ways of ensuring the equivalence of educational diplomas. The Agreement specifies other methods of expanding relations between the two countries in the fields mentioned above. It provides for the establishment of a cultural, scientific and technical commission to supervise its application. The Agreement has been concluded for a period of five years and is extended by tacit agreement. It may be denounced on the initiative of one of the Parties if six months' notice is given.

5. Cultural Co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of the People's

Republic of China, approved by Decision No. 728 of the Council of Ministers published in the *Collected Decisions and Regulations of the Council of Ministers,* No. 29, of 29 July 1965 (art. 19, art. 22, art. 26 (2) and art. 27 (1) of the Universal Declaration of Human Rights).

The Agreement provides for the strengthening and development of co-operation between the Contracting Parties in the fields of science, education, culture, art, the cinema, radio and television, health protection and sports.

The two Contracting Parties undertake to strengthen co-operation between their Academies of Science and scientific institutions by exchange visits of representatives for study and information purposes, exchanges of experience, specialized lectures and documentary material. In the field of education, arrangements are made for exchange visits of instructors, students, persons preparing their thesis and specialists taking advanced training, the provision of scholarships, exchanges of lecturers, etc. The Agreement specifies other measures designed to strengthen relations between the two countries in the fields mentioned above. The Agreement is valid for a period of five years. It is extended automatically unless denounced by one of the Contracting Parties in writing at least six months before the expiry of this period.

6. Technical and Scientific Co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of the Italian Republic, ratified by Decree No. 842 (1964) published in the *Official Bulletin,* No. 5, of 30 January 1965 (art. 19 and art. 27 (1) of the Universal Declaration of Human Rights).

The Agreement states that the Contracting Parties are desirous of encouraging and promoting the development and extension of scientific and technical co-operation between their countries, particularly in the following economic sectors: the iron and steel industry, machine building, mining and electric power, the petroleum industry, the chemical industry, the building industry, communications and transport, the forestry industry, the light and food industries, agriculture, building and architecture, as well as in the scientific organization of work and in other sectors of interest to the two Parties.

The methods specified in the Agreement for ensuring technical and scientific co-operation include exchange visits by specialists and technicians for study purposes, documentation and specialization, mutual technical assistance, the exchange of scientific and technical publications, etc. The Agreement has been concluded for a period of five years and is extended automatically from year to year unless denounced by one of the Contracting Parties one month before the expiry of these periods.

II. Multilateral Conventions

During 1965, the Socialist Republic of Romania ratified or acceded to the following international conventions relating to human rights:

1. By Decree No. 835 (1964), published in the *Official Bulletin,* No. 6 of 26 February 1965, it ratified the Convention on the International Exchange of Publications, signed at Paris on 5 December 1958 (art. 19 of the Universal Declaration of Human Rights).

2. By Decree No. 194, published in the *Official Bulletin,* No. 14 of 24 April 1965, Romania acceded to the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, and subsequently amended (art. 13 of the Universal Declaration of Human Rights).

D. JUDICIAL PRACTICE

1. By Decision No. 505 of 31 March 1965, the Criminal Division of the Supreme Court ruled that it was unlawful to reject evidence submitted by the defence on the grounds that it would conflict with the explanations given by the accused during the hearing, because evidence is admitted in connexion with circumstances to be determined and not in relation to the manner in which the parties concerned present the facts (art. 10 and art. 11 of the Universal Declaration of Human Rights).

2. As regards labour protection, the Criminal Division of the Supreme Court, by Decision No. 1291 of 10 December 1965, ruled that the fact of having prepared a plan of action and set tasks for his subordinates cannot absolve the Director of an enterprise of all responsibility for a labour accident which is caused by failure to take the protective measures required by the regulations in force, since the Director of the enterprise is required by law not only to draw up plans and transmit orders for execution, but also to ensure that they are actually carried out (art. 25 (1) of the Universal Declaration of Human Rights).

RWANDA

ACT OF 11 AUGUST 1965 CONCERNING THE ELECTORAL SYSTEM[1]

CHAPTER I

THE ELECTORAL SYSTEM

SECTION I. THE ELECTORAL ROLL AND APPEALS

Article 1

An electoral roll shall be drawn up in each commune. This roll shall be permanent. It shall be used for communal and legislative elections, for elections to appoint the President of the Republic, and for referendums. The burgomaster shall be responsible for keeping it up to date at all times. He shall ensure that any changes in the status of electors are immediately recorded in the electoral roll.

...

Article 10

At any time, save after the provisional closure of the roll which shall take place thirty-one days before the elections at 4 p.m., any citizen may appeal to the communal council of his commune against registration or non-registration in the electoral roll, or against suspension, exclusion or temporary prohibition of the right to vote.

If the communal council is dissolved, the cantonal court shall have competence.

Such appeals may refer to the electoral status of the claimant or to that of a third party.

...

SECTION II. THE DUTY TO VOTE

Article 15

Participation in elections and referendums organized by the public authorities shall be compulsory for all persons who have reached the age of eighteen whose status does not entail suspension, exclusion or temporary prohibition of the right to vote.

Voting by proxy shall be forbidden.

Article 16

Voters who are totally unable to take part in the vote must inform the burgomaster of their commune of the reasons for their failure to vote, and furnish the necessary proof.

...

[1] *Journal officiel de la République rwandaise*, No. 16, of 15 August 1965.

CHAPTER II

COMMUNAL ELECTIONS

SECTION II. ELECTORS

Article 21

The following shall be entitled to vote in communal elections: persons of either sex possessing Rwandese nationality, or who have become naturalized Rwandese citizens, who have reached the age of eighteen and who have been domiciled or principally resident in the commune for at least three months.

However, the three-months residence requirement shall be reduced to one month in the case of civil servants, priests or religious officials who are subject to transfers. This concession shall also be granted to members of their households.

The requirements described in the two paragraphs above must be fulfilled by the time of the provisional closure of the electoral roll.

Article 22

The following shall *ex officio* be temporarily prohibited from participating in the vote:

(*a*) Officers, non-commissioned officers and soldiers of the National Guard in active service;

(*b*) Members of the national police;

(*c*) Members of the communal police services.

Article 23

The following shall *ex officio* be temporarily toral roll:

(1) Persons definitively convicted and sentenced for murder or manslaughter;

(2) Persons convicted and sentenced for offences against the domestic or external security of the Republic to a sentence of more than twelve months of principal penal servitude;

(3) Persons who have failed to fulfil their military obligations by deserting;

(4) Persons who have forfeited their paternal or maternal authority.

Article 24

The right to vote shall be suspended in the case of:

(1) A prisoner;

(2) A person confined to an institution or hospital by reason of insanity or by virtue of any other social defence measure;

(3) Persons placed at the disposition of the Government by judicial decision.

Article 25

A person who is in a situation mentioned in articles 22, 23 and 24 at the time of the provisional closure of the electoral roll or on the date of the election shall be excluded from the electoral roll or suspended or temporarily prohibited from voting.

When the reasons for such exclusion, suspension or temporary prohibition arise after the provisional closure of the electoral roll but before the election, the chairman of the election board shall take cognizance of them.

SECTION III. ELIGIBILITY

Article 26

A person shall be eligible for election to the communal council, without distinction of sex, if he:

1. Is of Rwandese nationality or has been nationalized Rwandese;

2. Has had his domicile or habitual place of residence for at least six months in the electoral district in which he wishes to offer himself as a candidate;

3. Is not less than twenty-one years of age;

4. Does not practise polygamy or live with a concubine.

These requirements shall be met on or before the final date for the nomination of candidates.

The requirements specified in sub-paragraph 4, however, shall apply only as from 24 November 1962.

Article 27

The following shall not, however, be eligible:

1. A person who has been excluded from the electoral roll or suspended from voting under articles 23 and 24;

2. Without prejudice to sub-paragraph 1, a person who has been sentenced to penal servitude for a term of:

(*a*) Not less than twelve months nor more than five years during the past ten years;

(*b*) More than five years during the past twenty years;

3. A person who has been declared a fraudulent bankrupt or who has participated in the management of an enterprise that has been declared to be in fraudulent bankruptcy;

4. A person under a permanent disability.

The periods mentioned in sub-paragraphs 2 and 3 shall be calculated as from the date of the election.

The provisions of this article and of article 23 shall not apply to a person who has been granted a free pardon or who is a discharged bankrupt.

...

Article 32

Without prejudice to any disqualifications which may be laid down in the legislation governing the holding of public office or to any authorizations required thereunder, a member of a communal council may not also be:

A judge of the Supreme Court;

A *juge auxiliaire* (judge of the second to lowest rank), or

Juge suppleant (judge of the lowest rank);

An officer of the Public Prosecutor's Office.

...

SECTION IV. CANDIDATURES AND BALLOT PAPERS

Article 41

The vote shall be secret.

An illiterate voter may, however, be assisted by a literate person of his choice.

The voting shall take place on the basis of lists with proportional representation and preferential votes.

The seats won by each list shall be assigned to the candidates who have obtained the largest number of votes.

...

CHAPTER III

ELECTION OF THE BURGOMASTER

Article 95

The burgomaster shall be the candidate for the communal council who has obtained the largest number of votes.

Article 96

To be elected burgomaster in accordance with the preceding article a person must:

1. Fulfil the elegibility requirements specified in article 26;

2. Be able to read and write;

3. Accept the mandate;

4. Not perform functions which are incompatible with this mandate.

...

SECTION II. THE ELECTORATE

Article 100

Anyone may vote for deputies to the National Assembly, without distinction of sex, if he is of Rwandese nationality or has been naturalized Rwandese, is not less than eighteen years old, and has had his domicile or habitual residence in the commune for at least three months.

The three months' period of domicile or residence shall be reduced to one month, however,

in the case of civil servants and of clergy or members of religious orders who are subject to transfer.

This privilege shall be enjoyed by the members of their households also.

The requirements set out in sub-paragraphs 1 and 2 above shall be fulfilled not later than the date of the provisional closure of the electoral roll.

Article 101

The requirements laid down in articles 22, 23, 24 and 25 shall apply to elections for the legislature.

SECTION III. ELIGIBILITY

Article 102

A person shall be eligible to be a deputy to the National Assembly, without distinction of sex, if he:

1. Fulfils the requirements laid down in articles 26 and 96 of this Act;

2. Has had his domicile or habitual residence for at least three months in a commune belonging to the electoral district in which he offers himself as a candidate.

Article 103

A person who has been excluded from the electoral roll or suspended from voting under articles 23 and 24 or is covered by the provisions of article 27 shall not, however, be eligible.

Article 104

A person shall be declared ineligible if any of the cases mentioned in articles 23, 24 and 27 apply to him on the final date for nomination of candidates or at the date of the election.

...

Article 106

Without prejudice to any disqualifications which may be laid down in the legislation governing the holding of public office or to any authorizations required thereunder, a deputy to the National Assembly may not also be:

President of the Republic;

A judge of the Supreme Court;

A career judge, an officer of the Public Prosecutor's Office;

A *juge auxiliaire,* or a *juge suppleant;*

An officer of the judicial police;

An officer of the court;

A permanent or contractual employee of the Government or of a commune;

An officer, non-commissioned officer or soldier of the National Guard on the active list;

A member of the National Police Force;

A member of the communal police forces.

...

Article 118

The vote shall be secret.

An illiterate voter may, however, be assisted by a literate person of his choice.

The voting shall take place on the basis of lists with proportional representation and preferential votes.

...

SECTION II. THE ELECTORATE

Article 152

A person may vote in the elections for the President of the Republic if he fulfils the requirements laid down for voting in the elections for the legislature.

SECTION III. ELIGIBILITY

Article 153

A person shall be eligible to be President of the Republic if he:

1. Is of Rwandese nationality;

2. Is of the male sex;

3. Is serving as a communal councillor;

4. Is not less than thirty-five or more than sixty years old;

5. Fulfils the eligibility requirements for election to the National Assembly;

6. Does not belong to the Nyinginya dynasty of the Bahindiro clan.

The eligibility requirements shall be fulfilled on the final date for the nomination of candidates.

...

SECTION IV. NOMINATIONS AND BALLOT PAPERS

Article 166

The vote shall be secret.

An illiterate voter may, however, be assisted by a literate person of his choice.

...

SAN MARINO

NOTE [1]

During 1965 no constitutional or legislative enactments (or amendments) and no governmental or administrative decrees diectly concerned with human rights were issued in the Republic of San Marino.

In the opinion of the Secretariat of State, the following may have some bearing on human rights: Act No. 2 of 11 February 1965 on legal regulations for artisans' workshops (*Official Gazette* No. 1, page 4), Act No. 18 of 8 June 1965 on regulations for the licensing of commercial and industrial activities (*Official Gazette* No. 4, page 40) and Act No. 31 of 29 September 1965 on the institution of a special grant for parishes and parish establishments (*Official Gazette* No. 5, page 56).

[1] Note furnished by the Government of San Marino.

SENEGAL

ACT No. 65-40 OF 22 MAY 1965 CONCERNING SEDITIOUS ASSOCIATIONS [1]

Art. 1. Any association or group shall be dissolved by decree:

1. if it provokes armed demonstrations in the street;

2. if, by reason of its military form and organization, it resembles a fighting unit or private militia;

3. if its purpose is to violate the integrity of the national territory or to overthrow by force the republican form of government;

4. if its activities are liable to interfere unlawfully with the functioning of the constitutional system.

Art. 2. The decree of dissolution shall provide for all such measures as are necessary to ensure the immediate execution of such dissolution.

The uniforms, insignia, emblems, weapons, propaganda material and documents used or circulated by the association or group and all movable and fixed assets belonging to it shall be seized and confiscated. These items shall be sequestrated and disposed of by the Property Administration. After settling the liabilities as far as the assets thus realized permit, they shall become the property of the State.

Art. 3. Any *res inter vivos acta* or testamentary dispositions, whether for valuable consideration or not, made either directly or through a third person or otherwise indirectly for the purpose of enabling dissolved associations to evade the provisions of article 2, shall be deemed to be invalid.

Art. 4. Any person who retains, on any grounds, the items enumerated in article 2, paragraph 2, or who commits or attempts to commit the acts mentioned in article 3 shall be liable to a term of six days' to six months' imprisonment and to a fine of 10,000 to 100,000 francs.

Art. 5. Any person who has contributed to the continued existence or to the direct or indirect reconstitution of an association or group of the kind described in article 1 shall be liable to a term of six months' to two years' imprisonment and to a fine of 100,000 to 1,000,000 francs.

Loss of civil, civic and family rights, as provided for in the Penal Code, may be imposed for a term of not less than five and not more than ten years.

If the offender is an alien, the court shall also ban him from Senegalese territory.

The confiscation of all items used for the purpose of such continued existence or reconstitution shall be mandatory.

Art. 6. The procedure for *flagrante delicto* shall apply in the proceedings instituted for offences under the present Act.

...

[1] *Journal officiel de la République du Sénégal*, No. 347, of 5 June 1965.

SIERRA LEONE

THE NON-CITIZENS (REGISTRATION, IMMIGRATION AND EXPULSION) ACT, 1965

Act No. 14 of 1965, assented to on 8 June 1965 [1]

...

4. This Act shall not apply to the immigration of the following persons unless in any particular case the person in question is the subject of an Order of the Governor-General made under sections 20 or 21:

(*a*) Officers and members of the crews of the naval ships of any friendly power, who are in uniform; if such persons are not in uniform they must, before being exempted, satisfy the Immigration Officer as to their identity and occupation;

(*b*) Members of the diplomatic and consular services of a friendly country, who satisfy the Immigration Officer as to their identity and occupation, and their wives and children;

(*c*) Any person in the service of the Government who has in his possession a valid passport and satisfies the Immigration Officer as to his identity and occupation, and his wife and children;

(*d*) Any citizen of Sierra Leone;

(*e*) Any privileged African who is not a prohibited immigrant;

but all such persons shall complete the usual embarkation and disembarkation forms and until such time as the individual in question satisfies the Immigration Officer that he comes within any of the exemptions set out in this subsection the provisions of this Act shall apply to such person.

...

Part II

Registration of Non-citizens

6. (1) Every non-citizen belonging to a class or classes prescribed by the Prime Minister, and residing or being in Sierra Leone shall within three months of the first day of January in each year register at such place and pay such registration fee as shall be prescribed.

(2) Any person who fails to comply with the requirements of subsection (1) shall be guilty of an offence against this Act and liable on conviction to a fine not exceeding five hundred leones or to imprisonment for a period not exceeding twelve months and the Court by whom such person is convicted shall recommend that an Expulsion Order be made against him under section 21.

...

Part III

Disembarkation and Examination

11. The master of a vessel arriving at any place in Sierra Leone shall not permit any passenger who has embarked outside Sierra Leone to disembark from such vessel until such disembarkation has been authorised by an Immigration Officer.

12. Every passenger arriving by sea intending to disembark in Sierra Leone shall appear before the Immigration Officer at such time and place as the Immigration Officer shall direct, and the Immigration Officer, after such examination as he may consider necessary, shall inform any passenger whom he considers to be within the category of a prohibited immigrant of such finding and such passenger if still aboard the vessel shall not disembark in Sierra Leone or if disembarked for the purposes of such examination shall return forthwith to the vessel and remain thereon. The master of the vessel shall likewise forthwith be informed in writing by the Immigration Officer of his finding and the master shall not permit the prohibited immigrant to disembark in Sierra Leone:

Provided that the provisions of this section shall not apply where such passenger has embarked at any place in Sierra Leone and disembarks from the vessel at the same or any other place in Sierra Leone during, or at the end of, the voyage which the vessel began or was in the course of when he embarked.

...

Part IV

Conditions of Entry

16. (1) Subject to the provisions of subsection (2), no person shall enter Sierra Leone except upon such conditions relating to security to be furnished, duration and place of residence, occupation or business or any other matter or thing, whether similar to those before enumerated or not, as may be prescribed.

---

[1] *Supplement to the Sierra Leone Gazette*, Vol. XCVI, No. 48, of 10 June 1965.

(2) The provisions of subsection (1) shall not apply:

(*a*) to persons who enter Sierra Leone in accordance with the provisions of this Act,

(i) for a temporary visit; or

(ii) for the purpose of passing through Sierra Leone to, or in order to embark for, some other country; or

(*b*) in any case to which the proviso to section 12 refers.

(3) In the case of any person allowed to enter Sierra Leone under the provisions of subsection (1) no liability shall attach to the master, owner or agent of any vessel from which such person lands and the person in charge, the owner and the agent of any aircraft, motor or other vehicle shall, in like circumstances, be similarly exempt.

...

Part V

PROHIBITED IMMIGRANTS, EXPULSION AND DEPORTATION

19. (1) The immigration into Sierra Leone by land, sea or air of any person being or appearing to be of any of the classes specified in subsection (2) is prohibited:

Provided that such prohibition shall not apply to a person to whom a temporary or transit visa is issued under the provisions of section 18.

(2) The classes of prohibited immigrants shall be:

(*a*) any person who is without visible means of support or is likely to become a pauper or a public charge;

(*b*) any idiot or insane person;

(*c*) any person who, from official Government records, or from information officially received is deemed by the Governor-General to be undesirable;

(*d*) any person who is shown, to the satisfaction of the Governor-General, to be likely to conduct himself so as to be dangerous to peace and good order in Sierra Leone, or to excite enmity between the people of Sierra Leone and Her Majesty or to intrigue against Her Majesty's power and authority in Sierra Leone;

(*e*) any person or class of persons the immigration of whom is prohibited by Order of the Governor-General under section 20 or in respect of whom an Expulsion Order has been made under the provisions of section 21;

(*f*) (i) any person who:

(*aa*) has not in his possession a valid passport or in the case of a privileged African a travel certificate; or

(*bb*) being a juvenile under the age of sixteen years, has not in his possession a valid passport or in the case of a privileged African a travel certificate or is not accompanied by an adult on whose valid passport or travel certificate particulars of such juvenile appear;

(ii) in the case of a person who is neither a privileged African nor a Commonwealth citizen nor a citizen of a country which has been declared by the Governor-General by notice in the *Gazette* to be a country the subjects or citizens of which are exempt from this provision, such passport must bear the *visa* of a Sierra Leone Consul or other accredited Sierra Leone Representative, stating whether the person concerned is in transit or otherwise;

(*g*) any prostitute;

(*h*) any person who is or has been:

(i) a brothel keeper;

(ii) a householder permitting the defilement of a young girl on his premises;

(iii) a person allowing a person under thirteen years of age to be in a brothel;

(iv) a person causing or encouraging the seduction or prostitution of a girl under thirteen years of age;

(v) a person trading in prostitution; or

(vi) a procurer.

...

20. Notwithstanding anything in this Act the Governor-General may, in his absolute discretion by Order prohibit the entry into Sierra Leone of any non-citizen.

21. (1) Notwithstanding anything in this Act it shall be lawful for the Governor-General to make an Order (hereinafter called an Expulsion Order) requiring any non-citizen to leave Sierra Leone within a time fixed by such Order, and thereafter to remain out of Sierra Leone.

(*a*) if he deems it conducive to the public good to make an Expulsion Order against the non-citizen, or

(*b*) if it is certified to him by a Judge or Magistrate that the non-citizen has been convicted by the Court of any felony, misdemeanour, or other offence for which the Court has power to impose imprisonment without the option of a fine or of any offence under this Act, and that the Court recommends that an Expulsion Order should be made in his case either in addition to or in lieu of the sentence:

Provided that nothing contained in paragraph (*b*) shall prejudice the power of the Governor-General in his absolute discretion to make an Expulsion Order under the provisions of paragraph (*a*).

(2) An Expulsion Order may be made subject to any condition which the Governor-General may think proper.

(3) An Expulsion Order may be made in respect of one or more non-citizens as the Governor-General may think proper.

...

THE COPYRIGHT ACT, 1965

Act No. 28 of 1965, assented to on 6 August 1965 [2]

...

Part II

COPYRIGHT IN ORIGINAL WORK

3. (1) In this Act "copyright" in relation to a work (except where the context otherwise requires) means the exclusive right, by virtue of and subject to the provisions of this Act, to do, and to authorise other persons to do, certain acts in relation to that work in Sierra Leone.

The said acts, in relation to a work of any description, are those acts which, in the relevant provision of this Act, are designated as the acts restricted by the copyright in a work of that description.

(2) In accordance with subsection (1), but subject to the following provisions of this Act, the copyright in a work is infringed by any person who, not being the owner of the copyright, and without the licence of the owner thereof, does, or authorises another person to do, any of the said acts in relation to a work in Sierra Leone.

(3) In the preceding subsections references to the relevant provision of this Act, in relation to a work of any description are references to the provision of this Act whereby it is provided that (subject to compliance with the conditions specified therein) copyright shall subsist in works of the description.

(4) The preceding provisions of this section shall apply, in relation to any subject-matter (other than a work) of a description to which any provision of Part III relates, as they apply in relation to a work.

(5) For the purposes of any provision of this Act which specifies the conditions under which copyright may subsist in any description of work or other subject-matter, "qualified person":

(*a*) in the case of an individual, means a person who is a Sierra Leone citizen or (not being a Sierra Leone citizen) is domiciled or resident in Sierra Leone, and

(*b*) in the case of a body corporate, means a body incorporated under the laws of Sierra Leone.

...

7. (1) Without prejudice to the general provisions of section 3 as to infringements of copyright, the provisions of this section shall have effect in relation to copyright subsisting by virtue of this Part.

(2) The copyright in a literary, dramatic, musical or artistic work is infringed by any person who, without the licence of the owner of the copyright, imports an article (otherwise than for his private and domestic use) into Sierra Leone if to his knowledge the making of that article constituted an infringement of that copyright, or would have constituted such an infringement if the article had been made in Sierra Leone.

(3) The copyright in a literary, dramatic, musical or artistic work is infringed by any person who in Sierra Leone and without the licence of the owner of the copyright:

(*a*) sells, lets for hire, or by way of trade offers or exposes for sale or hire any article, or

(*b*) by way of trade exhibits any article in public if to his knowledge the making of the article constituted an infringement of that copyright, or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it was imported.

(4) Subsection (3) shall apply in relation to the distribution of any articles either:

(*a*) for purposes of trade, or

(*b*) for other purposes, but to such an extent as to effect prejudicially the owner of the copyright in question,

as it applies in relation to the sale of an article.

(5) The copyright in a literary, dramatic or musical work is also infringed by any person who permits a place of public entertainment to be used for a performance in public of the work where the performance constitutes an infringement of the copyright in the work:

Provided that this subsection shall not apply in cases where the person permitting the place to be so used:

(*a*) was not aware, and had not reasonable grounds for suspecting, that the performance would be an infringement of the copyright, or

(*b*) gave the permission gratuitously, or for a consideration which was only nominal or (if more than nominal) did not exceed a reasonable estimate of the expenses to be incurred by him in consequence of the use of the place for the performance.

(6) In this section "place of public entertainment" includes any premises which are occupied mainly for other purposes, but are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment.

8. (1) No fair dealing with a literary, dramatic or musical work for purposes of research or private study shall constitute an infringement of the copyright in the work.

(2) No fair dealing with a literary, dramatic

[2] *Ibid.*, Vol. XCVI, No. 62, of 12 August 1965.

or musical work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work and is accompanied by a sufficient acknowledgement.

(3) No fair dealing with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for the purpose of reporting current events:

(*a*) in a newspaper, magazine or similar periodical or

(*b*) by means of broadcasting, or in a cinematograph film, and, in a case falling within paragraph (*a*) is accompanied by a sufficient acknowledgement.

(4) The copyright in a literary, dramatic or musical work is not infringed by reproducing it for the purposes of a judicial proceeding, or for the purposes of a report of a judicial proceeding.

(5) The reading or recitation in public by one person of any reasonable extract from a published literary or dramatic work if accompanied by a sufficient acknowledgement shall not constitute an infringement of the copyright in the work.

...

(10) In this Act, "sufficient acknowledgement" means an acknowledgement identifying the work in question by its title or other description and, unless the work is anonymous or the author had previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

9. (1) The copyright in an article contained in a periodical publication is not infringed by the making or supplying of a copy of the article, if the copy is made or supplied by or on behalf of the librarian of a library of a class prescribed by Regulations made under this subsection by the Minister of Education, and the conditions prescribed by those Regulations are complied with.

...

Part III

COPYRIGHT IN SOUND RECORDINGS, CINEMATOGRAPH FILMS, BROADCASTS, ETC.

14. (1) Copyright shall subsist, subject to the provisions of this Act, in every sound recording of which the maker was a qualified person at the time when the recording was made.

...

15. (1) Copyright shall subsist, subject to the provisions of this Act, in every cinematograph film of which the maker was a qualified person for the whole or a substantial part of the period during which the film was made.

...

16. (1) Copyright shall subsist, subject to the provisions of this Act:

(*a*) in every television broadcast made by the Sierra Leone Broadcasting Service (in this Act referred to as the Service) or by the Sierra Leone Television Authority (in this Act referred to as the Authority) from a place in Sierra Leone, and

(*b*) in every sound broadcast made by the Service or the Authority, from such a place.

...

Part IV

REMEDIES FOR INFRINGEMENT OF COPYRIGHT

19. (1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement all such relief, by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

...

THE NON-CITIZEN (RESTRICTION OF TRADE OR BUSINESS) ACT, 1965

Act No. 30 of 1965, assented to on 1 October 1965[3]

...

2. (1) The Minister may from time to time by Order declare any area in Sierra Leone to be a restricted area.

(2) Any non-citizen engaged in any trade (whether retail or otherwise) or business in a restricted area, shall forthwith (or within such period as the Minister may permit) cease to operate or participate in that area in any trade or business which may have been specified by the Minister in any such Order.

3. (1) As from the commencement of this Act, no non-citizen shall engage in any new trade (whether retail or otherwise), or business, or open a new branch of an existing trade or business.

(2) Any trade (whether retail or otherwise) or business conducted by a non-citizen in premises other than those occupied on the 1st day of April, 1965, shall be deemed to be a new branch for the purpose of subsection (1).

4. (1) Non-citizens shall forthwith (or within such period not exceeding twelve months from the commencement of this Act as the Minister may permit) cease to operate or participate in any of the following businesses:

[*Listed are six kinds of businesses*]

...

[3] *Supplement to the Sierra Leone Gazette Extraordinary*, Vol. XCVI, No. 79, of 1 October 1965.

5. Where by any treaty or agreement reciprocal advantages are or have been granted to citizens of Sierra Leone in any other country the Minister may by Order published in the *Gazette* exempt the citizens of that country from all or any of the provisions of this Act. Any such exemption may be limited in such manner or subject to such conditions as the Minister may think fit.

...

THE CRIMINAL PROCEDURE ACT, 1965

Act No. 32 of 1965, assented to on 6 October 1965 [4]

Part I

GENERAL PROVISIONS

PROCEDURE

3. Without prejudice to the provisions of any enactment, all criminal offences shall be enquired into, tried and otherwise dealt with according to the provisions of this Act.

ARREST GENERALLY

4. (1) In making an arrest the constable or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such constable or other person may use sufficient force to effect the arrest but not more.

(3) Nothing in this section gives a right to cause the death of any person except when a constable or private person is legally attempting to arrest the person killed, upon a charge of treason, frelony or inflicting a dangerous wound and the arrest of such person cannot otherwise be accomplished.

(4) If a constable is assaulted or obstructed when making any arrest, it shall be the duty of any private person, on whom he may call for aid, to go to his assistance.

5. If any person acting under a warrant of arrest, or any constable having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place, shall on demand of the person so acting or such constable, allow him free entry thereto and afford all reasonable facilities for a search therein.

6. If entry to such a place cannot be effected under section 5 it shall be lawful in any such case as is therein mentioned for such person acting under a warrant of arrest or such constable having authority to arrest to enter such place and search therein and, in order to effect entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

7. Any constable or other person authorised to make an arrest may break out of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

8. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

9. (1) The constable or other person making an arrest may take from the person arrested any offensive weapons which he has about his person, or anything found in his possession likely to afford material evidence for the prosecution in respect of the offence for which the offender has been arrested. Anything so taken from an arrested person shall be produced before the Court.

(2) The constable or other person who arrests any person on a charge of an offence against the person of another may cause the person arrested by him to be examined by a medical practitioner:

Provided that any person so examined shall have the right to require that such examination shall be made in the presence of his own medical practitioner or of some other person selected by him.

10. Subject to the provisions of section 80, all arrested persons shall be brought as soon as possible before the Court having jurisdiction in the case, or the Court within the local limits of whose jurisdiction any such person was arrested.

ARREST WITHOUT WARRANT

11. Any private person may arrest without a warrant—

(*a*) any person who in his presence commits a felony;

(*b*) any person whom he suspects of having committed a felony, if such felony had actually been committed and such private person has reasonable grounds to believe that the person arrested has committed that felony;

(*c*) any person offering to sell, pawn or deliver any property which such private person has reasonable grounds to believe to be stolen property;

[4] *Supplement to the Sierra Leone Gazette*, Vol. XCVI, No. 81, of 7 October 1965.

(*d*) any person about to commit an act which would manifestly endanger another person's life;

(*e*) any person detaining or suspected of detaining any other person with the intent to kidnap or unlawfully remove him from Sierra Leone.

12. When a private person arrests any person under section 11 he shall deliver the person arrested, and the property, if any, taken into possession by him, as soon as may be to a constable.

13. (1) Any constable may without a warrant arrest—

(*a*) any person who commits any offence involving violence or dishonesty in his presence;

(*b*) any person whom any other person positively accuses of having committed any felony or any larceny, embezzlement, false pretences or receiving;

(*c*) any person whom any other person suspects of having committed any felony or any misdemeanour mentioned in paragraph (*b*), if the suspicion of such other person appears to the constable to be well founded and he shall declare his name and place of residence to the constable and accompany the latter to the nearest police station or lock up, if required to do so;

(*d*) any person whom he has reasonable cause to suspect of having committed or being about to commit any felony;

(*e*) any person whom he finds between the hours of six in the evening and six in the morning lying or loitering in any street, highway, yard, compound or other place, and not giving a satisfactory account of himself;

(*f*) any loose, idle or disorderly person whom he finds in any way disturbing the peace, whether in a public or private place, or causing annoyance to any person.

(2) Nothing in this section shall in any way effect or derogate from any other powers conferred on constables by this or any other Act.

14. (1) Where any person, other than a person liable to be arrested without a warrant, who has been accused of committing an offence refuses on demand of a constable to give his name and place of residence, or gives a name or place of residence which the constable has reason to believe to be false, he may be arrested by the constable in order that his name and place of residence may be ascertained.

(2) When the true name and place of residence have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a court if so required.

(3) Should the true name and place of residence of that person be not ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond, or if so required, to furnish sufficient sureties, he shall forthwith be brought before the nearest Court having jurisdiction.

15. Except where the person arrested is in the actual course of the commission of a crime or is pursued immediately after escape from lawful custody, the constable or other person making the arrest shall inform the person arrested of the cause of the arrest, and if the constable or other person is acting under the authority of a warrant, shall notify the substance thereof to the person to be arrested, and if so required shall show him the warrant.

PROCESS AGAINST THE ACCUSED OR DEFENDANT

16. (1) In every case the Court may proceed either by way of summons to the accused or the defendant or by way of warrant for the arrest of the accused in the first instance, according to the nature and circumstances of the case.

(2) If the accused is undergoing imprisonment, a warrant to bring him before the Court may be directed to the Keeper of any prison within which the accused is confined.

. . .

GENERAL AUTHORITY OF THE COURTS

36. (1) Every Court has authority to cause to be brought before it any person who is within the local limits of its jurisdiction and is charged with an offence committed within Sierra Leone, or which according to law may be dealt with as if it had been committed within Sierra Leone, and any person within such limits against whom a complaint is made on which the Court has power to make any order for the payment of money or otherwise, and to deal with all such persons according to its jurisdiction.

(2) The Supreme Court has in addition authority to cause to be brought before it any person who is within Sierra Leone if he is charged with an offence over which the Supreme Court has jurisdiction.

37. (1) A Court (in this section and section 38 referred to as the Remitting Court) before which any person who is within the local limits of its jurisdiction and is charged with having committed an offence within the local limits of the jurisdiction of another Court is brought, shall unless authorised to proceed in the case, send him in custody to the Court within the local limits of whose jurisdiction the offence was committed, or require him to give security for his surrender to such last-mentioned Court, there to answer the charge and to be dealt with according to law.

(2) The Remitting Court shall send to the Court to which the person charged is remitted for trial an authenticated copy of the information, summons, warrant and all other process or documents in its possession relative to such person.

38. Where any person is to be sent in custody in pursuance of section 37, a warrant shall be issued by the Remitting Court and that warrant

shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him and deliver him up to the Court to which the person charged is remitted for trial.

...

PREVIOUS ACQUITTAL OR CONVICTION

47. A person, who has been once tried for an offence and convicted or acquitted of such offence, shall not be liable to be tried again on the same facts for the same offence or any other offence of which he could have been lawfully convicted at the first trial, unless a retrial is ordered by a Court having power to do so.

48. A person convicted or acquitted of any act causing consequences, which together with such act constitute a different offence from that for which such person was convicted or acquitted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the Court to have happened at the time when he was acquitted or convicted.

49. In any information or indictment against any person in which evidence of the previous conviction or acquittal of such person for any offence is relevant to the issue, a certificate containing the substance and effect only (omitting the formal part) of the information or indictment and conviction or acquittal for such offence, purporting to be signed by the officer having the custody of the records of the Court where the offender was convicted or acquitted, or by his deputy, shall, upon proof of the identity of the person convicted or acquitted be sufficient evidence of the said conviction or acquittal without proof of the signature or official character of the person appearing to have signed the same.

...

OFFENCES BY NON-CITIZENS WITHIN THE TERRITORIAL SEA

53. (1) Subject to subsection (2), proceedings for the trial of any person, who is not a citizen of Sierra Leone for an offence committed within the territorial sea of Sierra Leone, shall not be instituted in any court except with the consent of the Attorney-General and upon his certificate that it is expedient that such proceedings should be instituted.

...

COMPENSATION AND COSTS

54. (1) When any person is convicted of an offence and the facts constituting the offence amount also to a tort against the person or property of the prosecutor, the Court before which such person is convicted may, on the application of the prosecutor and after taking any such further evidence as it deems necessary, order the person convicted to pay the prosecutor such sum as appears to the Court to be reasonable compensation (not exceeding in the case of a summary conviction one thousand leones) in addition to or in lieu of any other punishment.

(2) Where a prosecutor has actually received the compensation awarded under the provisions of subsection (1) or any part thereof the convicted person shall be released from all further or other proceedings by the prosecutor whether civil or criminal for the same cause.

55. The Court may order any person convicted before it to pay all or any specified part of the expenses of his prosecution.

56. Where it appears to the Court that a charge is malicious, frivolous or vexatious, the Court may order the prosecutor to pay all or any specified part of the expenses of the prosecution or of the defence.

...

RESTITUTION OF PROPERTY

59. (1) Where upon the arrest of a person charged with an offence any property is taken from him, the Court before which he is charged may order that the property or a part thereof be restored to the person who appears to the Court to be entitled thereto.

(2) Where property is retained in court pending an appeal on application by summons any Judge of the Court to which an appeal has been made or in which notice of leave to appeal has been entered, may if he considers that the property is not necessary for the determination of the questions raised in the appeal, order the property or any part thereof to be returned to the person who appears to him to be entitled thereto.

...

LUNACY OF ACCUSED AND DEFENCE OF LUNACY

71. (1) When in the course of a trial or preliminary investigation (but not an inquest) the Court has reason to believe that the accused or the defendant is of unsound mind and consequently unable to make his defence, it shall order the accused to be confined in a mental hospital for a period of thirty days for observation. Before or immediately upon the conclusion of this period the Chief Medical Officer shall cause a report on the condition of the accused or the defendant signed by two registered medical practitioners (which report may, if such be the case, indicate that the practitioners who signed the same hold different opinions as to the accused's mental state) to be sent to the Court, which shall forthwith, after considering the report and taking such further evidence as it shall consider necessary, make a finding upon the state of mind of the accused.

...

Part II

SUMMARY TRIAL

92. Trials in the Magistrates' Courts shall be conducted summarily in the manner and subject to the conditions laid down in this Part.

93. The room or place in which the Court sits to hear and determine the charge shall be an open and public Court, to which the public generally shall have access as far as it can conveniently contain them.

...

Part III

PRELIMINARY INVESTIGATIONS

108. Where a person is before the Magistrate charged with an offence which is triable exclusively by the Supreme Court or in the opinion of the Magistrate ought to be tried by such court, the Magistrate shall conduct a preliminary investigation into the charge alleged, in accordance with the procedure laid down in this Part.

109. The room or place in which the investigation is held shall not be an open or public Court for that purpose, and the Court may, if it thinks that the ends of justice will be served by so doing, order that no person shall have access to, or be or remain in the room or place without the express permission of the Court.

110. Upon the appearance of the accused before the Court on summons, warrant or otherwise, the Court shall cause the substance of the charge against the accused to be stated to him and the accused shall not be required to make any reply thereto; if any such reply is made it shall not be recorded by the Court.

...

TRIAL OF CHILDREN AND YOUNG PERSONS

210. Children and young persons accused of criminal offences shall be apprehended and tried in accordance with the provisions of the Children and Young Persons Act.

Part VI

EXECUTION OF SENTENCES

CAPITAL SENTENCES

...

215. If a woman convicted of an offence punishable with death be alleged to be pregnant, the Court shall enquire into the fact; and if there be reasonable cause for believing it, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.

216. Sentence of death shall not be pronounced or recorded against a person convicted of any offence if it appears to the Court that at the time when the offence was committed he was under the age of eighteen years; but in lieu thereof the court shall sentence him to be detained during Her Majesty's pleasure and if so sentenced, he shall be liable to be detained in such place and under such conditions as the Governor-General may direct, and whilst so detained shall be deemed to be in legal custody.

THE PUBLIC ORDER ACT, 1965

Act No. 46 of 1965, assented to on 31 December 1965 [5]

...

Part II

BREACH OF PUBLIC ORDER

2. Any person who in the view of the public or in any public place, insults any person in his presence, in such a manner as would be likely to provoke that person to commit a breach of the peace, shall, on conviction, be liable to a fine, not exceeding twenty leones or to imprisonment not exceeding three months or both.

3. Any person who—

(i) makes use of any threatening, abusive insulting or obscene language, gesture, or behaviour, or says or sings any insulting or offensive song or ballad or makes any noise with intent to provoke any other person to commit a breach of the peace; or

(ii) makes use of any threatening, abusive, insulting, obscene or profane language, or says or sings any insulting or offensive song or ballad; or makes a noise to the annoyance of any person in any place; or

(iii) sends or delivers to any person any threatening scurrilous, offensive, or obscene writing, print, engraving, picture or other representation; or

(iv) calls any person by a name or description other than his own, with intent to insult or annoy such person; or

(v) with intent to insult or annoy any person knowingly publishes, or causes to be published, in any newspaper, any false notice or advertisement of any birth, marriage or death,

shall, on conviction, be liable to a fine, not exceeding twenty leones or imprisonment for a period not exceeding three months or both.

...

CARRYNG OF OFFENSIVE WEAPONS

16. (1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, carries with him in any public place any offensive weapon shall be guilty of an offence, and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding one thousand leones, or both.

(2) Where any person is convicted of an offence under subsection (1) the court may make

[5] *Supplement to the Sierra Leone Gazette Extraordinary*, Vol. XCVI, No. 11, of 31 December 1965.

an Order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

(3) A constable may arrest without warrant any person whom he has reasonable cause to believe to be committing an offence under subsection (1) if the constable is not satisfied as to that person's identity or place of residence, or has reasonable cause to believe that it is necessary to arrest him in order to prevent the commission by him of any other offence in the course of committing which an offensive weapon might be used.

Part III

PROCESSIONS

17. (1) Any person who intends to take part or takes part in organising or holding any procession shall first notify the Commissioner of Police in writing of his intention to do so and any person who fails to give such notification as aforesaid shall be guilty of an offence.

(2) The Commissioner of Police shall by Order in writing addressed to such person giving notice, disallow the holding of any procession or impose such conditions as he shall think fit on any procession where in his opinion the interests of defence, public order, public safety or public morality so require.

(3) Any person who takes part in any procession which has been disallowed by the Commissioner of Police or fails to comply with any of the conditions imposed by him under the provisions of subsection (2) shall be guilty of an offence.

(4) Any person found guilty of an offence under this section shall be liable on conviction to a fine not exceeding two hundred leones or to imprisonment for a period not exceeding six months or both.

(5) This section shall not apply to processions of the following nature—

(*a*) circumcision;

(*b*) funeral;

(*c*) marriage;

(*d*) scouts or girl guides;

(*e*) schools.

...

21. (1) The Governor-General may from time to time by Order exempt from the operation of this Part or any provisions thereof, any general or particular class of persons subject to any terms or conditions as he may by such Order impose.

...

Part IV

PUBLIC MEETINGS

23. (1) If any persons to the number of twelve or more shall come in a riotous, tumultous or disorderly manner to the precincts of the House of Representatives or any committee in sitting, in order either to hinder or to promote the passing of any bill, resolution, or other matter pending before the House of Representatives or such committee, they shall each be guilty of an offence and shall, on conviction, each be liable to a fine of four hundred leones or to imprisonment for twelve months, or to both such fine and imprisonment.

(2) If any person shall incite any other persons to come in a riotous, tumultous or disorderly manner to the precincts of the House of Representatives while the House of Representatives or any committee is sitting in order either to hinder or to promote the passing of any bill, resolution or any matter pending before the House of Representatives or such committee, he shall be guilty of an offence and shall on conviction, be liable to a fine of four hundred leones, or to imprisonment for twelve months or to both such fine and imprisonment.

(3) Any person who within five hundred yards of the precincts of the House of Representatives is guilty of any riotous, indecent, disorderly or insulting behaviour, shall on conviction be liable to a fine of one hundred leones or to imprisonment for six months or to both such fine and imprisonment.

(4) It shall be unlawful for any person to convene or call together or to give any notice for convening or calling together any meeting consisting of more than *fifty* persons or for any number of persons exceeding fifty to meet in any street, road or other public place within a distance of one mile from the House of Representatives for the purpose or on the pretext of considering or preparing any petition, complaint, remonstrance, declaration or other address to the Governor-General or to the House of Representatives for alteration of matters of state on any day on which the House of Representatives shall meet or be summoned to meet or prorogued.

Provided that nothing in this subsection contained shall be deemed or taken to apply to or affect any sitting of any court by law established.

24. (1) Any person who intends to convene or hold a public meeting at any place in the provinces shall first notify in writing the Paramount Chief of the Chiefdom in which such place is situated.

...

Part V

DEFAMATORY AND SEDITIOUS LIBEL

DEFAMATION

26. Any person who maliciously publishes any defamatory matter knowing the same to be false shall be guilty of an offence called libel and liable on conviction to imprisonment for any term not exceeding three years or to a fine not exceeding one thousand leones or both.

27. Any person who maliciously publishes any defamatory matter shall be guilty of an offence called libel and liable on conviction to a fine not

exceeding seven hundred leones or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

...

SEDITIOUS LIBEL

33. (1) Any person who—

(*a*) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or

(*b*) utters any seditious words; or

(*c*) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

(*d*) imports any seditious publication, unless he has no reason to believe that it is seditious,

shall be guilty of an offence and liable for a first offence to imprisonment for a term not exceeding three years, or to a fine not exceeding one thousand leones or to both such imprisonment and fine, and for a subsequent offence shall be imprisoned for a term not exceeding seven years, and every such seditious publication shall be forfeited to the Government.

(2) Any person who without lawful excuse has in his possession any seditious publication shall on conviction be guilty of an offence and liable for a first offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred leones or to both such imprisonment and fine and for a subsequent offence shall be imprisoned for a term not exceeding three years and every such publication shall be forfeited to the Government.

...

Part VI

PUBLIC EMERGENCY

38. (1) During a period of public emergency, the Governor-General acting in accordance with the advice of the Prime Minister may make such Regulations as appear to him to be necessary or expedient for the purposes of maintaining and securing peace, order and good Government in Sierra Leone or any part thereof.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Regulations may, so far as appears to the Governor-General acting as aforesaid to be necessary or expedient for any of the purposes mentioned in that subsection—

(*a*) make provision for the detention of persons and the deportation and exclusion of persons from Sierra Leone or any part thereof;

(*b*) authorise—

(i) the taking of possession or control on behalf of the Government of any property or undertaking;

(ii) the acquisition on behalf of the Government of any property other than land;

(*c*) authorise the entering and search of any premises;

(*d*) provide for amending any law, for suspending the operation of any law, and for applying any law with or without modification;

(*e*) provide for charging, in respect of the grant or issues of any licence, permit certificate or other document for the purposes of the Regulations such fees as may be prescribed by or under the Regulations;

(*f*) provide for payment of compensation and remuneration to persons affected by the Regulations;

(*g*) provide for the apprehension, trial and punishment of persons offending against the Regulations;

(*h*) provide for maintaining such supplies and services as are, in the opinion of the Governor-General acting as aforesaid, essential to the life of the Community:

Provided that nothing in this subsection shall authorise the making of provision for the trial of persons by military courts.

(3) The payment of any compensation or remuneration under the provisions of such Regulations shall be a charge upon the consolidated Revenue Fund.

(4) Regulations made under this subsection shall apply to the whole of Sierra Leone or to such part or parts thereof as may be specified in the Regulations.

...

SINGAPORE

NOTE [1]

1. The Republic of Singapore became a sovereign and independent nation on 9 August 1965. As stated in the Proclamation of Independence, it is " founded upon the principles of liberty and justice and ever seeking the welfare and happiness of her people in a more just and equal society ".

2. The basic guarantees of human rights contained in the Constitution of Singapore are to be found in The Constitution of Singapore (No.RS(A) 14 of 1966) and The Federal Constitution of Malaysia read with the Republic of Singapore Independence Act, 1965 (No.A2 of 1965). Human rights are also protected and promoted by Statutory Enactments and by the rules of the common law.

3. The fundamental rights protected in the Constitution are:

(*a*) liberty of person;

(*b*) prohibition of slavery and forced labour;

(*c*) protection against retrospective criminal laws and repeated trials;

(*d*) equality before the law and equal protection of the law;

(*e*) freedom of movement and prohibition of banishment of citizens;

(*f*) freedom of speech, assembly and association;

(*g*) freedom of religion;

(*h*) equal rights in respect of education;

(*i*) protection of private property from acquisition without compensation.

4. Singapore has a democratic form of government. Under the Constitution of Singapore, election to Parliament must be held at least once every five years. Every adult has a compulsory vote and voting is secret. The Singapore Parliament Elections Ordinance (Cap. 53, Revised Ed. 1955) regulates the registration of electors and the holding of elections. The validity of an election of any candidate may be challenged by means of an election petition presented to the Chief Justice or a Judge nominated by the Chief Justice. The Constitution contains detailed provisions as to the workings of the Parliament, the significant feature for the present purpose is that " all debates and discussions in Parliament shall be conducted in the Malay, English, Mandarin or Tamil languages ". Members of Parliament check on the activities of the Government at Question-Time.

5. The Constitution makes provision for an independent Judiciary and its powers and jurisdiction are defined in the Courts of Judicature Act, 1964 (RS(A) No. 6 of 1966). The High Court and the Federal Court are entrusted with the task of enforcing the fundamental rights entrenched in the Constitution. Section 1 of the First Schedule of the Courts of Judicature Act confers on the High Court the " power to issue to any person or authority directions, orders or writs including writs of the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any others, for the enforcement of any of the rights conferred by the Constitution or any of them or for any purpose ". Under this provision, the Courts exercise, *inter alia,* a supervisory jurisdiction over the activities of domestic and statutory tribunals. These bodies must observe the rules of natural justice and not act in excess of their powers. [*Alkaff & Co.* v. *Governor-in-Council* (1936) 6 M.L.J. 28; *Goonitilleke* v. *Medical Council* (1911) 12 S.S.L.R. 95; *Lee Kian Soo* v. *Board of Architects* (1952) 3 M.L.R. 90; *Chacko and Others* v. *Army Civil Services Union* (1964) 30 M.L.J. 403]. There is an appeal from the High Court to the Federal Court and finally to the Judicial Committee of the Privy Council.

6. The Government and its servants or agents are subject to the ordinary law of the land. Persons aggrieved by any wrongful act or any neglect or default by any public officer can sue the Government in the Courts for damages. The procedural law in this respect is spelt out in the Government Proceedings Ordinance, 1956.

7. The procedure for the administration of criminal law is laid down in the Criminal Procedure Code (Cap. 132, Rev. Ed. 1955). The police powers with regard to arrest, search, interrogation and the manner of procuring evidence are strictly limited by the provisions of the Code. The rules relating to the admissibility of evidence are contained in the Evidence Ordinance (Cap. 4, Rev. Ed. 1955). There are adequate safeguards in the criminal process in Singapore to ensure that an accused person is treated fairly. Some of the important safeguards are:

(*a*) a person arrested by the police without a

[1] Note furnished by the Government of Singapore.

warrant must be produced before a Magistrate within 24 hours;

(*b*) an arrested person has the right to be informed at once of the grounds of his arrest;

(*c*) an arrested person has the right to consult and be defended by a legal practitioner of his choice;

(*d*) any statement whether it amounts to a confession or not made by an accused person in the course of police investigation is admissible only if it is not obtained under inducement, threat or promise of any favour from a person in authority;

(*e*) statements made by an accused person after his arrest are admissible in evidence only if the proper caution is administered;

(*f*) the police, Magistrates and District Judges have power to grant bail. If a Magistrate or District Judge refuses bail the accused can appeal to the High Court which has the power to grant bail or vary the bail allowed by the Court below.

8. Under the Constitution the Legislature is given special powers to make laws to stop or prevent action that has been taken or threatened which is prejudicial to the national security, public safety, peace and good order of the Republic. To this extent, there are the Criminal Law (Temporary Provisions) Ordinance, 1955, and the Preservation of Public Security Ordinance, 1955, as modified by the Internal Security Act, 1960. These Enactments make provisions to restrict the freedom of movement and association and when necessary, for preventive detention of certain persons. They are persons whose activities are or likely to be prejudicial to the security of the country or to the maintenance of public order or essential services, and, persons who have been associated with activities of a criminal nature of whom the Minister, with the consent of the Public Prosecutor, is satisfied that it is necessary to detain in the interest of public safety, peace and good order. Considering that these laws are enacted for an emergency or are of a temporary nature, adequate protection is afforded to persons against whom detention or restrictive orders are made. Under the Internal Security Act, 1960, the period of detention or any restrictive order made by the Minister of Defence, shall not exceed two years but may be extended for a period or periods not exceeding two years at a time. Further, a person against whom an order is made must be informed of the grounds and allegations of fact on which the order is based. He must also be given an opportunity of making representations against the order as soon as possible. When any representation is made, an Advisory Board, in practice presided over by a Judge of the High Court, must within three months of the date on which the person is detained, consider the representation and make recommendations to the President who may give the Minister such directions as he thinks fit regarding the order made by him. Finally, every order of the Minister must be reviewed by the Advisory Board at least once in every twelve months. Under the Criminal Law (Temporary Provisions) Ordinance, 1955, the period of detention must not exceed one year in the first instance and is renewable for a further period or periods not exceeding six months at any one time. An Advisory Committee, presided over by a judicial officer or a Member of the Bar, reviews each case within twenty-eight days of the making of the order. This Ordinance which came into operation in October, 1955, is to be in force for a period of fourteen years from the date of its commencement.

9. The economic, social and cultural rights of the people of Singapore are also adequately protected:

(*a*) The basic rights of women and children are protected by such legislation as the Women's Charter, 1961, the Adoption of Children Ordinance (Cap. 26, Rev. Ed. 1955), the Children and Young Persons Ordinance (Cap. 128, Rev. Ed. 1955) and the Legitimacy Ordinance (Cap. 42, Rev. Ed. 1955).

(*b*) The rights of the workers are likewise adequately protected by legislation: Labour Ordinance, 1955, Shop Assistants Employment Ordinance, 1957, Workmen's Compensation Ordinance (Cap. 157, Rev. Ed. 1955), Trade Disputes Ordinance (Cap. 154, Rev. Ed. 1955), Trade Unions Ordinance (Cap. 153, Rev. Ed. 1955), and the Industrial Relations Ordinance, 1960. Particular reference must be made to the Industrial Relations Ordinance, 1960 (No.R.S.(A) 10 of 1966). The principal features of the Ordinance are a compulsory system of conciliation through the media of Conciliation Officers and in the last resort by a conference chaired by the Minister responsible for Labour or his nominee when an employer or a trade union of employees fails to accept an invitation to negotiate with a view to entering into a Collective Agreement; the creation of the Industrial Arbitration Court, an independent tribunal, for the voluntary or compulsory adjudication of trade disputes; and the registration and certification of Collective Agreements by the Court which will have the force of Awards as if made by the Court.

(*c*) The Constitution makes especial reference to the Muslim religion and provides that the Legislature may make laws regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion. There is in operation the Muslims Ordinance, 1957, which consolidates the law relating to Muslims, the registration of marriages and divorces among Muslims and establishes the Shariah Court. The Court is empowered to hear and determine all actions and proceedings in which all the parties are Muslims and which involve disputes relating to marriage, divorce, betrothal, nullity of marriage or judicial separation, disposition or division

of property on divorce and other related matters.

10. The Government has since independence established a Constitutional Commission headed by the Chief Justice with the following terms of reference:

(*a*) To receive and consider representation on how the rights of the racial, linguistic and religious minorities can be adequately safeguarded in the Constitution.

(*b*) To consider what provisions should be made to ensure that no legislation, which by its practical application is considered likely to be discriminatory against members of any racial, linguistic or religious group, should be enacted before adequate opportunities have been given for representation from parties likely to be aggrieved.

(*c*) To consider what remedies should be provided for any citizen or group of citizens who claim that he or they have been discriminated against by any act or decision of the Government or the administration or any statutory board or public body constituted by law, and to recommend the machinery for the redress of any complaints.

(*d*) To consider how such provisions can be entrenched in the Constitution.

11. The people of Singapore being of diverse races, religions and cultures, the Government, ever conscious of the Universal Declaration of Human Rights, is dedicated to the establishment and maintenance of a multi-racial, multi-lingual, multi-religious and multi-cultural society on the basis of equality for all.

CONSTITUTION OF THE STATE OF SINGAPORE [2]

Part I

THE STATE GOVERNMENT

CHAPTER 1. YANG DI-PERTUAN NEGARA

1. (1) There shall be a Yang di-Pertuan Negara of the State, who shall be appointed by the Yang di-Pertuan Agong acting in his discretion but after consultation with the Prime Minister.

(2) The Yang di-Pertuan Negara shall be appointed for a term of four years but may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong and may be removed from office by the Yang di-Pertuan Agong in pursuance of an address by the Legislative Assembly supported by the votes of not less than two-thirds of the total number of the Members thereof.

(3) The Yang di-Pertuan Agong, acting in his discretion but after consultation with the Prime Minister, may appoint a person to exercise the functions of the Yang di-Pertuan Negara during any period during which the Yang di-Pertuan Negara is unable to do so himself owing to illness, absence or any other cause; but no person shall be so appointed unless he would be qualified to be appointed as Yang di-Pertuan Negara.

(4) A person appointed under clause (3) of this Article may take the place of the Yang di-Pertuan Negara as a member of the Conference of Rulers during any period during which, under that clause, he may exercise the functions of Yang di-Pertuan Negara.

2. (1) A person who is not a citizen of Malaysia born in Malaya shall not be appointed Yang di-Pertuan Negara.

(2) The Yang di-Pertuan Negara shall not hold any office of profit and shall not actively engage in any commercial enterprise.

...

CHAPTER 2. MUSLIM RELIGION

6. (1) The Yang di-Pertuan Agong shall be the Head of the Muslim religion in the State.

(2) The Legislature shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the Muslim religion.

CHAPTER 3. THE EXECUTIVE

7. (1) The executive authority of the State shall be vested in the Yang di-Pertuan Negara and exercisable subject to the provisions of this Constitution by him or by the Cabinet or any Minister authorised by the Cabinet.

(2) The Legislature may by law confer executive functions on other persons.

...

8. (1) There shall be in and for the State a Cabinet which shall consist of the Prime Minister and such other Ministers as may be appointed in accordance with the provisions of the following Article.

(2) Subject to the provisions of the Federal Constitution and of this Constitution, the Cabinet shall have the general direction and control of the Government of the State and shall be collectively responsible to the Legislative Assembly.

9. (1) The Yang di-Pertuan Negara shall appoint as Prime Minister a Member of the Legislative

[2] The Constitution appears in Schedule 3 to The Sabah, Sarawak and Singapore (State Constitutions) Order in Council of 29 August 1963, published as *Statutory Instruments*, No. 1493 of 1963 in the *Government Gazette, Subsidiary Legislative Supplements*, No. 1, of 16 September 1963.

Assembly who in his judgment is likely to command the confidence of the majority of the Members of the Legislative Assembly, and shall, acting in accordance with the advice of the Prime Minister, appoint other Ministers from among the Members of the Legislative Assembly:

Provided that, if an appointment is made while the Legislative Assembly is dissolved, a person who was a member of the last Legislative Assembly may be appointed but shall not continue to hold office after the first sitting of the next Legislative Assembly unless he is a member thereof.

(2) Appointments under this Article shall be made by the Yang di-Pertuan Negara by instrument under the public seal.

...

Part II

THE LEGISLATURE

22. The Legislature of the State shall consist of the Yang di-Pertuan Negara and the Legislative Assembly.

23. (1) The Legislative Assembly shall consist of such number of elected Members as the Legislature may by law provide, and until other provision is so made, the number of Members shall be fifty-one.

(2) If any person who is not a Member of the Legislative Assembly is elected as Speaker, he shall by virtue of holding the office of Speaker, be a Member of the Legislative Assembly in addition to the Members aforesaid, except for the purposes of Chapter 3 of Part I and of Article 30 of this Constitution.

...

28. (1) Members of the Legislative Assembly shall be persons qualified for election in accordance with the provisions of this Constitution and elected in the manner provided by or under any law for the time being in force in the State.

(2) A person shall be qualified to be elected as a Member of the Legislative Assembly if—

(*a*) he is a citizen of Singapore;

(*b*) he is of the age of twenty-one years or upwards on the day of nomination;

(*c*) his name appears in a current register of electors;

(*d*) he is resident in the State at the date of his nomination for election;

(*e*) he is able, with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Legislative Assembly, to speak and, unless incapacitated by blindness or other physical cause, to read and write at least one of the following languages, that is to say, English, Malay, Mandarin and Tamil; and

(*f*) he is not disqualified from being a Member of the Legislative Assembly under the provisions of Article 29 of this Constitution.

(3) Any question whether any person possesses the qualifications mentioned in paragraph (*e*) of the preceding clause shall be determined in such manner as may be prescribed by or under any law for the time being in force in the State or, in so far as not so prescribed, as may be provided by Order made by the Yang di-Pertuan Negara and published in the Gazette.

29. (1) Subject to the provisions of this Article, a person shall not be qualified to be a Member of the Legislative Assembly who—

(*a*) is and has been found or declared to be of unsound mind;

(*b*) is an undischarged bankrupt;

(*c*) holds an office of profit;

(*d*) having been nominated for election to either House of Parliament or to the Legislative Assembly or having acted as election agent to a person so nominated, has failed to lodge any return of election expenses required by law within the time and in the manner so required;

(*e*) has been convicted of an offence by a court of law in any part of the Federation and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand dollars and has not received a free pardon;

(*f*) has voluntarily acquired citizenship of, or exercised rights of citizenship in a foreign country or has made a declaration of allegiance to a foreign country;

(*g*) is disqualified under any law relating to offences in connection with elections to either House of Parliament or to the Legislative Assembly by reason of having been convicted of such an offence or having in proceedings relating to such an election been proved guilty of an act constituting such an offence.

(2) The disqualification of a person under paragraph (*d*) or paragraph (*e*) of clause (1) of this Article may be removed by the Yang di-Pertuan Negara and shall, if not so removed, cease at the end of five years beginning from the date on which the return mentioned in the said paragraph (*d*) was required to be lodged or, as the case may be, the date on which the person convicted as mentioned in the said paragraph (*e*) was released from custody or the date on which the fine mentioned in the said paragraph (*e*) was imposed on such person; and a person shall not be disqualified under paragraph (*f*) of clause (1) of this Article by reason only of anything done by him before he became a citizen.

(3) In paragraph (*f*) of clause (1) of this Article " foreign country " has the same meaning as in the Federal Constitution.

...

Part III

CITIZENSHIP

53. (1) There shall be a status known as " citizen of Singapore ".

(2) The status of a citizen of Singapore may be acquired—

(*a*) by birth;

(*b*) by descent;

(*c*) by registration or enrolment; or

(*d*) under the provisions of the Federal Constitution by naturalisation.

(3) In accordance with the position of the State within the Federation every person who is a citizen of Singapore enjoys by virtue of that citizenship and in accordance with the provisions of the Federal Constitution the status of a citizen of Malaysia.

54. (1) Subject to the provisions of this Article, every person born in the State after the coming into operation of this Constitution shall be a citizen of Singapore by birth.

(2) A person shall not be a citizen of Singapore by virtue of clause (1) of this Article if at the time of his birth—

(*a*) his father, not being a citizen of Malaysia, possessed such immunity from suit and legal process as is accorded to an envoy of a sovereign power accredited to the Yang di-Pertuan Agong; or

(*b*) his father was an enemy alien and the birth occurred in a place then under the occupation of the enemy; or

(*c*) neither of his parents was a citizen of Singapore and neither of them was a permanent resident in the Federation:

Provided that paragraph (*c*) of this clause shall not apply to any person if, as a result of the application of that paragraph, he would not be a citizen of any country.

55. (1) A person born outside the Federation after the coming into operation of this Constitution shall be a citizen of Singapore by descent if at the time of the birth his father is a citizen of Singapore:

Provided that such person shall not be such a citizen unless his birth is registered at a Consulate of the Federation or with the Government in the prescribed manner within one year of its occurrence or with the permission of the Government later.

(2) A person born in the Federation outside the State on or after the date of the coming into operation of this Constitution shall be a citizen of Singapore by descent if one at least of his parents is at the time of his birth a citizen of Singapore and he is not born a citizen of Malaysia otherwise than by virtue of this clause.

56. (1) Subject to the provisions of this Constitution, a person of or over the age of twenty-one years, not being a citizen of Singapore, who is a citizen of Malaysia may on making application therefor to the Government in the prescribed form be enrolled as a citizen of Singapore if he satisfies the Government that he—

(*a*) is of good character;

(*b*) has resided in the State throughout the twelve months immediately preceding the date of his application;

(*c*) has during the twelve years immediately preceding the date of his application resided in the State for periods amounting in the aggregate to not less than ten years;

(*d*) intends to reside permanently in the State; and

(*e*) has an elementary knowledge of the national language:

Provided that the Government may exempt an applicant who has attained the age of forty-five years or who is deaf or dumb from compliance with the provisions of paragraph (*e*) of this clause.

(2) In relation to citizens of Malaysia who are not citizens of Singapore, clause (2) of Article 57 and Article 58 of this Constitution shall apply to allow them to be enrolled as citizens of Singapore in the same way as those provisions apply in relation to persons who are not citizens of Malaysia to allow them to be registered as citizens of Singapore.

57. (1) Subject to the provisions of this Constitution, any person of or over the age of twenty-one years, not being a citizen of Malaysia, who was resident in the State on the coming into operation of this Constitution may, on application being made therefor in the prescribed form be registered with the concurrence of the Government of the Federation as a citizen of Singapore if he satisfies the Government that he—

(*a*) is of good character;

(*b*) has resided in the State throughout the twelve months immediately preceding the date of his application;

(*c*) has during the twelve years immediately preceding the date of his application resided in the State for periods amounting in the aggregate to not less than ten years;

(*d*) intends to reside permanently in the State; and

(*e*) has an elementary knowledge of the national language:

Provided that the Government may exempt an applicant who has attained the age of forty-five years or who is deaf or dumb from compliance with the provisions of paragraph (*e*) of this clause.

(2) Subject to the provisions of this Constitution any woman, not being a citizen of Malaysia, who is married to a citizen of Singapore may, on making application therefor in the prescribed manner, be registered as a citizen of Singapore if she satisfies the Government—

(*a*) that she has resided continuously in the State for a period of not less than two years immediately preceding the date of the application;

(*b*) that she intends to reside permanently in the State; and

(*c*) that she is of good character.

58. (1) The Government may if satisfied that a child under the age of twenty-one years who is not a citizen of Malaysia—

(*a*) is the child of a citizen of Singapore; and

(*b*) is residing in the State,

cause such child to be registered as a citizen of Singapore on application being made therefor in the prescribed manner by the parent or guardian of such child.

(2) The Government may, in such special circumstances as it thinks fit, cause any child under the age of twenty-one years, who is not a citizen of Malaysia, to be registered as a citizen of Singapore.

59. Subject to the provisions of Article 60 of this Constitution a person enrolled or registered as a citizen of Singapore under Article 56, 57 or 58 of this Constitution shall be a citizen of Singapore from the date on which he is so enrolled or registered.

60. (1) No person shall be registered as a citizen of Singapore under Article 57 of this Constitution until he has taken the oath of allegiance and loyalty in the form prescribed in the Second Schedule to this Constitution.

(2) Except with the approval of the Government of the Federation, no person who has renounced or has been deprived of citizenship of Singapore or of citizenship of the Federation of Malaya or of citizenship of Malaysia under this Constitution or the Singapore Citizenship Ordinance, 1957 or the Federal Constitution or the Federation of Malaya Agreement, 1948, as the case may be, shall be registered as a citizen of Singapore under the provisions of this Constitution.

61. (1) A citizen of Singapore who is a citizen by registration or by naturalization shall cease to be such a citizen if he is deprived of his citizenship by an order of the Government made in accordance with the provisions of this Article.

(2) The Government may, by order, deprive any such citizen of his citizenship if the Government is satisfied that the registration or certificate of naturalization—

(*a*) was obtained by means of fraud, false representation or the concealment of any material fact; or

(*b*) was effected or granted by mistake.

(3) The Government may, by order, deprive any such citizen of his citizenship if the Government is satisfied that that citizen has, within the period of five years after registration or naturalization, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the currency of that country and has not received a free pardon in respect of the offence for which he was so sentenced.

(4) No person shall be deprived of citizenship under this Article unless the Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Singapore; and no person shall be deprived of citizenship under paragraph (*b*) of clause (2) or under clause (3) of this Article if the Government is satisfied that as a result of the deprivation he would not be a citizen of any country.

(5) This Article shall not apply to any person who has been naturalized as a citizen of Singapore under the provisions of the Federal Constitution.

62. (1) Where a person has been enrolled as a citizen of Singapore under the provisions of Article 56 of this Constitution and the Government is satisfied that the enrolment—

(*a*) was obtained by means of fraud, false representation or the concealment of any material fact; or

(*b*) was effected by mistake,

the Government may by order cancel the enrolment.

(2) Where under this Article a person's enrolment as a citizen of Singapore is cancelled that shall not discharge him from liability in respect of anything done or omitted before the cancellation, but except as regards anything so done or omitted he shall as provided in the Federal Constitution revert to his former status as a citizen of Malaysia

63. (1) Before making an order under Article 61 or 62 of this Constitution, the Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article.

(2) If any person to whom such notice is given applies within such time as may be prescribed to have the case referred to a committee of inquiry, the Government shall, and in any other case may, refer the case to a committee of inquiry consisting of a Chairman, who shall be a person qualified to be appointed as a Judge of the High Court, and two other members appointed by the Government in that behalf.

(3) The committee of inquiry shall, on such reference, hold an inquiry in such manner as may be prescribed and submit a report to the Government and the Government shall have regard to such report in making the order.

64. Where a person who is a citizen of Singapore has renounced his citizenship of Malaysia or been deprived of his citizenship of Malaysia by the Government of the Federation such person shall be deemed to have renounced or been deprived of his citizenship of Singapore under this Constitution and such person shall cease to be a citizen of Singapore.

65. (1) Where a person has been deprived of his citizenship or his enrolment as a citizen has been cancelled under the provisions of this Part of this Constitution, the Government may by order deprive of his citizenship or, as the case may be, cancel the enrolment of any child of that person under the age of twenty-one years who has been registered or enrolled as a citizen under the provisions of this Constitution or the Singapore Citizenship Ordinance, 1957, and was so registered or enrolled as being the child of that person or of that person's wife or husband.

(2) No person shall be deprived of his citizenship under clause (1) of this Article unless the Government is satisfied that it is not conducive to the public good that he should continue to be a citizen; and no person shall be deprived of his citizenship under clause (1) of this Article if the Government is satisfied that as a result of such deprivation he would not be a citizen of any country.

66. Upon application made in that behalf in the prescribed manner the Government may grant in the form prescribed a certificate of citizenship to a person with respect to whose citizenship a doubt exists, whether of fact or of law.

67. Where under this Constitution a person becomes a citizen of Singapore by registration or is enrolled as a citizen of Singapore or is deprived of his citizenship or a certificate of citizenship is granted to any person under Article 66 of this Constitution the Government shall notify the Government of the Federation of that fact.

...

Part VI

GENERAL PROVISIONS

89. (1) It shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in the State.

(2) The Government shall exercise its functions in such manner as to recognize the special position of the Malays, who are the indigenous people of the State, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political educational, religious, economic, social and cultural interests and the Malay language.

90. (1) Subject to the provisions of the Federal Constitution and to the following provisions of this Article, the provisions of this Constitution may be amended by a law enacted by the Legislature.

(2) A Bill for making an amendment to this Constitution (other than an amendment excepted from the provisions of this clause) shall not be passed by the Legislative Assembly unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of members thereof.

(3) The following amendments are excepted from the provisions of clause (2) of this Article, that is to say—

(*a*) any amendment consequential on such a law as is mentioned in Article 23 of this Constitution;

(*b*) any amendment the effect of which is to bring the Constitution of the State into accord with any of the essential provisions contained in the Eighth Schedule to the Federal Constitution.

(4) In this Article "amendment" includes addition and repeal.

...

THE CONSTITUTION (AMENDMENT) ACT, 1965

Act No. 8 of 22 December 1965,
deemed to have come into operation on 9 August 1965 [3]

...

2.—(1) On and after the coming into operation of this Act—

(*a*) the Yang di-Pertuan Negara of Singapore shall be known as the President of Singapore;

(*b*) the Legislative Assembly of Singapore shall be known as the Parliament of Singapore;

(*c*) the State Advocate-General of Singapore shall be known as the Attorney-General of Singapore; and

(*d*) the State of Singapore shall be known as the Republic of Singapore.

(2) Nothing in this Act shall affect the validity of any acts done in the name of, or by, the Yang di-Pertuan Negara or the State Advocate-General before the enactment of this Act.

3. Article 1 of the Constitution of the State of Singapore (hereinafter in this Act referred to as "the Constitution") is hereby repealed and the following substituted therefor:

1.—(1) There shall be a President of Singapore, who shall be elected by Parliament.

(2) The President shall not be liable to any proceedings whatsoever in any court.

(3) The President shall hold office for a term of four years from the date on which he enters upon his office but may at any time resign his office by writing under his hand addressed to the Speaker of Parliament, and may be removed from office in pursuance of a resolution of Parliament supported by the votes of not less than two-thirds of the total number of the Members thereof.

(4) The Cabinet may appoint a person to exercise the functions of the President for any period during which the President is unable to do so himself owing to illness, absence from Singapore or any other cause; but no person shall be so appointed unless he would be qualified to be appointed as President.

...

[3] *Government Gazette, Acts Supplement*, No. 1, of 23 December 1965.

THE REPUBLIC OF SINGAPORE INDEPENDENCE ACT, 1965

Act No. 9 of 23 December 1965 [4]

1. This Act may be cited as the Republic of Singapore Independence Act, 1965, and shall be deemed to have come into operation on the 9th day of August, 1965 (hereinafter in this Act referred to as "Singapore Day").

2. In this Act, unless it is otherwise provided or the context otherwise requires—

"Head of State" means the President of Singapore; "Legislature" or "Legislature of Singapore" means the President and the Parliament of Singapore;

"Singapore" means the Republic of Singapore.

3. The Yang di-Pertuan Agong of Malaysia shall with effect from Singapore Day cease to be the Supreme Head of Singapore and his sovereignty and jurisdiction and power and authority, executive or otherwise, in respect of Singapore shall be relinquished and shall vest in the Head of State.

4. The executive authority of Singapore shall, on and after Singapore Day, be vested in the Head of State and shall be exercisable by him or by the Cabinet or by any Minister authorised by the Cabinet.

5. The legislative powers of the Yang di-Pertuan Agong and of the Parliament of Malaysia shall on Singapore Day cease to extend to Singapore and shall be transferred so as to vest in the Head of State and in the Legislature of Singapore, respectively.

...

[4] *Ibid.*, No. 2, of 28 December 1965.

SOUTH AFRICA

THE SEPARATE REPRESENTATION OF VOTERS AMENDMENT ACT, 1965

Act No. 83 of 1965, assented to on 18 June 1965 [3]

1. Section *twenty* of the Separate Representation of Voters Act, 1951, [2] is hereby amended by the substitution for sub-section (3) of the following sub-section:

"(3) (*a*) Members of the House of Assembly or provincial councillors who, under this Act, are members of the House of Assembly or the provincial council concerned at the commencement of the Separate Representation of Voters Amendment Act, 1965, or are thereafter declared to be duly elected as members of the House of Assembly or as provincial councillors, including any such members or councillors declared to be elected under the provisions of section *eighty-eight* of the principal Act, shall, notwithstanding anything to the contrary in any other law contained, hold office for a period determined by effluxion of time, five years after the date of the last general election of members of the House of Assembly or of provincial councillors, as the case may be, under this Act.

"(*b*) For the purpose of providing for a general election of members of the House of Assembly or of provincial councillors under this Act, a special proclamation shall be issued, in terms *mutatis mutandis* of section *thirty-five* of the principal Act, on a date not later than seven days after the termination of the period of office of the sitting members or councillors.

"(*c*) Any reference in section *fifty-three* or sub-section (2) of section *seventy-one* of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), to the dissolution of the House of Assembly or a provincial council, as the case may be, shall, in relation to a member of the House of Assembly or to a provincial councillor elected under this Act, be construed as a reference to the date on which such member's or councillor's period of office expires by effluxion of time.

"(*d*) For the purposes of this section a general election of members of the House of Assembly or of provincial councillors to whom this Act applies, means an election at which all those members of the House of Assembly or those provincial councillors are to be elected on the same day."

[1] *Statutes of the Republic of South Africa, 1965.*

[2] For extracts from the Separate Representation of Voters Act, 1951, see *Yearbook on Human Rights for 1951*, pp. 351-353.

THE CONSTITUTION AMENDMENT ACT, 1965

Act No. 83 of 1965, assented to on 18 June 1965 [3]

1. Section *forty* of the Republic of South Africa Constitution Act, 1961 (hereinafter referred to as the principal Act), [4] is hereby amended by the substitution for paragraph (*a*) of the following paragraph:

"(*a*) one hundred and sixty members, each of whom shall be directly elected by the persons entitled to vote at an election of such a member in an electoral division delimited as provided in section *forty-three;*"

2. The following section is hereby substituted for section *forty-two* of the principal Act:

"42. (1) At intervals of not less than five years and not more than ten years commencing from the last delimitation of electoral divisions under the South Africa Act, 1909, the State President shall appoint a delimitation commission consisting of three judges of the Supreme Court of South Africa, which shall divide the Republic into one hundred and sixty electoral divisions in such a manner that no electoral division is situated partly in one province and partly in another province.

"(2) No judge shall be appointed under sub-section (1) as a member of a delimitation commission unless he has served as a judge

[3] *Statutes of the Republic of South Africa, 1965.*

[4] For extracts from the Constitution of the Republic of South Africa of 1961, see *Yearbook on Human Rights for 1961*, pp. 311-312.

either in a permanent or temporary capacity, for a total period of not less than five years.

"(3) In dividing the Republic into electoral divisions in terms of sub-section (1) the said commission shall act in accordance with the provisions of section *forty-three.*"

3. The following section is hereby substituted for section *forty-three* of the principal Act:

"43. (1) For the purposes of any division of the Republic into electoral divisions, the quota of the Republic shall be obtained by dividing the number of white voters in the Republic, in terms of the current voters' lists, duly corrected up to the latest possible date, by one hundred and sixty.

"(2) The Republic shall be divided into electoral divisions in such a manner that each such division shall, subject to the provisions of sub-section (3), contain a number of voters as nearly as may be equal to the quota of the Republic.

"(3) The delimitation commission shall give due consideration to—

(*a*) community or diversity of interests;

(*b*) means of communication;

(*c*) physical features;

(*d*) boundaries of existing electoral divisions;

(*e*) sparsity or density of population;

(*f*) probability of increase or decrease of population;

(*g*) local authority and magisterial district boundaries,

in such manner that, while taking the quota of voters as the basis of division, the commission may depart therefrom whenever it is deemed necessary, but in no case to any greater extent than fifteen per cent more or fifteen per cent less than the quota: Provided that in the case of an electoral division with an area of ten thousand square miles or more, the commission may reduce the number of voters to eight thousand or a number equal to seventy per cent of the quota, whichever is the greater."

THE CRIMINAL PROCEDURE AMENDMENT ACT, 1965

Act No. 96 of 1965, assented to on 18 June 1965 [5]

1. Section *twenty-seven* of the Criminal Procedure Act, 1955 (hereinafter referred to as the principal Act), [6] is hereby amended by the substitution for sub-section (1) of the following sub-section:

"(1) Any person arrested without warrant shall, as soon as possible, be brought to a police station or charge office and detained until a warrant is obtained for his further detention upon a charge of any offence or until he is released by reason that no charge is to be brought against him; and unless so released he shall as soon as possible be brought before a judicial officer upon a charge of any offence: Provided that a person so arrested without warrant shall not be so detained for a period longer than forty-eight hours unless a warrant for his further detention is obtained: Provided further that if the said period of forty-eight hours expires at a certain time on a Saturday, Sunday or public holiday, it shall be deemed to expire at that time on the next day, not being a Saturday, Sunday or public holiday."

2. Section *thirty-nine* of the principal Act is hereby amended—

(*a*) by the substitution in sub-section (1) for the expression "*twenty-seven* of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911)" of the expression "*forty-eight* of the Prisons Act, 1959 (Act No. 8 of 1959)."

(*b*) by the substitution for sub-section (2) of the following sub-section:

"(2) Any person who rescues or attempts to rescue from lawful custody any other person who has been arrested but is not yet lodged in any prison, police-cell or lock-up, or who aids such other person to escape, or in an attempt to escape, from such custody, or who harbours or conceals or assists in harbouring or concealing him, knowing him to have so escaped, shall be guilty of an offence and liable on conviction to the penalties prescribed in section *forty-three* of the Prisons Act, 1959 (Act No. 8 of 1959)."

(*c*) by the addition of the following sub-section:

"(3) Notwithstanding anything to the contrary in any law contained, a magistrate shall have jurisdiction to try any offence under this section and to impose any penalty prescribed by this section."

3. Section *seventy-four* of the principal Act is hereby amended by the substitution for sub-section (4) of the following sub-section:

"(4) Nothing in this section contained shall be construed as modifying the provisions of section *twenty-nine* of the Prisons Act, 1959 (Act No. 8 of 1959)."

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[5] *Statutes of the Republic of South Africa, 1965.*

[6] For extracts from the Criminal Procedure Act, 1955, see *Yearbook on Human Rights for 1955*, pp. 235-243.

4. The following section is hereby substituted for section *eighty-three* of the principal Act:

"83. (1) A magistrate may, at any time upon the request of the public prosecutor require the attendance before him for examination by the public prosecutor of any person who is likely to give material evidence as to any alleged offence, whether or not it be known or suspected who the person is by whom the offence has been committed.

"(2) The provisions of sections *two hundred and six, two hundred and seven, two hundred and nine, two hundred and eleven, two hundred and twelve, two hundred and sixteen, two hundred and seventeen, two hundred and eighteen, two hundred and nineteen and two hundred and fifty-four* shall apply in respect of an examination under this section as if it were criminal proceedings and the magistrate a court: Provided that the examination of such persons may be conducted in private at any place appointed by the magistrate for that purpose."

5. Section *one hundred and eight* of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section:

"(1) If any person under the age of eighteen years is charged with an offence, any court which or any magistrate or policeman who may under any provision of this Chapter release such person on bail, may, instead of releasing him on bail, or instead of detaining him, place him in a place of safety as defined in section *one* of the Children's Act, 1960 (Act No. 33 of 1960),[7] pending his appearance or further appearance before a court or magistrate, or until he is otherwise dealt with according to law or, unless he is charged with treason, murder, contravention of any provision of the Suppression of Communism Act, 1950 (Act No. 44 of 1950),[8] or that Act as applied by any other law, in respect of which a minimum or compulsory punishment applies, or contravention of section *twenty-one* of the General Law Amendment Act, 1962 (ACT No. 76 of 1962).[9]

(*a*) release him without bail and warn him to appear before a court or magistrate at a time and on a date then fixed by the court, magistrate or policeman; or

(*b*) release him without bail to the care of the person in whose custody he is and warn that person to bring him or cause him to be brought before a court or magistrate at a time and on a date then fixed as aforesaid."

6. Section *one hundred and eight bis* of the principal Act is hereby amended:

(*a*) by the substitution for sub-section (1) of the following sub-section:

"(1) Whenever any person has been arrested on a charge of having committed any offence referred to in Part II*bis* of the Second Schedule, the attorney-general may, if he considers it necessary in the interest of the safety of the public or the maintenance of public order, issue an order that such person shall not be released on bail or otherwise before sentence has been passed or he has been discharged: Provided that if no evidence has been led against such person, at a preparatory examination or trial, within a period of ninety days after his arrest, he may at any time after that period on notice to the attorney-general apply to a judge of the Supreme Court to be released on bail, and the judge sitting in Chambers may on the merits of the application order the release of such person on bail on such terms and conditions as he may direct, or he may dismiss the application or otherwise deal with it as he deems fit."

(*b*) by the deletion of sub-sections (5) and (6).

7. The following section is hereby inserted after section *two hundred and fifteen* of the principal Act:

"215*bis*. (1) Whenever in the opinion of the attorney-general there is any danger of tampering with or intimidation of any person likely to give material evidence for the State in any criminal proceedings in respect of an offence referred to in Part II*bis* of the Second Schedule or that any such person may abscond, or whenever he deems it to be in the interests of such person or of the administration of justice, he may issue a warrant for the arrest and detention of such person.

"(2) Notwithstanding anything in sub-section (3) of section *twenty-nine* contained, any person arrested by virtue of a warrant under sub-section (1) of this section shall, as soon as may be, be taken to the place mentioned in the warrant and detained there or at any other place determined by the attorney-general from time to time, in accordance with regulations which the Minister is hereby authorized to make.

"(3) Unless the attorney-general orders that a person detained under sub-section (1) be released earlier, such person shall be detained for the period terminating on the day on which the criminal proceedings concerned are concluded or for a period of six months after his arrest, whichever may be the shorter period.

"(4) No person, other than an officer in the service of the State acting in the performance of his official duties, shall have access to a person detained under sub-section (1), except with the consent of and subject to the conditions determined by the attorney-general or an officer in the service of the State delegated by him.

"(5) Any person detained under sub-section (1) shall be visited in private not less than once during each week by the magistrate

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[7] See *Yearbook on Human Rights for 1960*, p. 334.

[8] See *Yearbook on Human Rights for 1950*, pp. 300-306.

[9] See *Yearbook on Human Rights for 1962*, pp. 274-277.

or an additional or assistant magistrate of the district in which he is detained.

"(6) For the purposes of section *two hundred and eighteen* any person detained under sub-section (1) shall be deemed to have attended the criminal proceedings in question as a witness for the State during the whole of the period of his detention.

"(7) No court shall have jurisdiction to order the release from custody of any person detained under sub-section (1) or to pronounce upon the validity of any regulation made under sub-section (2) or the refusal of the consent required under sub-section (4) or any condition referred to in sub-section (4)".

8. Section *two hundred and thirty-nine* of the principal Act is hereby amended:

(*a*) by the substitution in sub-section (4) for all the words preceding the proviso of the following words:

"Whenever any fact ascertained by any examination or process requiring any skill in bacteriology, biology, chemistry, physics, astronomy, geography, anatomy, pathology, toxicology, or the identification of finger or palm prints is or may become relevant to the issue in any criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of the Republic or of a province or in the service of, or attached to, the South African Institute for Medical Research or any University in the Republic or any other institution designated by the State President for the purposes of this section by proclamation in the *Gazette*, and that he has ascertained any such fact by means of any such examination or process, shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (6), be admissible to prove that fact;"

(*b*) by the insertion after sub-section (4)*bis* of the following sub-sections:

"(4)*ter* In any criminal proceedings in which the finding of or action taken in connection with particular finger or palm prints is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is or was an officer in the service of the State and that in the performance of his official duties he found such finger or palm prints on, at or in the place, article, position or circumstances stated in the affidavit, or that he dealt with such finger or palm prints in the manner so stated, shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (6), be *prima facie* proof of the facts so alleged.

"(4)*quat*. In any criminal proceedings in which the physical condition or identity of a deceased person or dead body while such person or dead body was in or at a hospital, nursing home, ambulance or mortuary, is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is or was employed at or in connection with the hospital, nursing home, ambulance or mortuary and that in the performance of his official duties there or in connection therewith he observed the physical characteristics of the deceased person or dead body described in the affidavit, or that while the deceased person or dead body was under his care, such person or dead body sustained the injuries or wounds described in the affidavit or sustained no injuries or wounds, or that he pointed out or handed over the deceased person or dead body to another person or left the deceased person or dead body in the care of another person, or that the deceased person or dead body was pointed out or handed over to him or left in his care by another person, shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (6), be *prima facie* proof of the facts so alleged."

9. Section *two hundred and seventy-six* of the principal Act is hereby amended by the substitution for sub-section (3) of the following sub-section:

"(3) If at any trial referred to in sub-section (1) it is proved that the accused received from a person under the age of eighteen years stolen goods or property or anything obtained by means of an offence, he shall be presumed to have known at the time when he received those goods or that property or thing, that they or it were or was stolen or had been obtained by means of an offence, unless it is proved that at that time he was under the age of twenty-one years or had good reason, other than the mere statement of the person rom whom he received the goods, property or thing, to believe, and that he did believe, that the said person had the right to dispose of those goods or of that property or thing."

10. Section *three hundred and thirty* of the principal Act is hereby amended by the substitution in sub-section (1) for all the words preceding the proviso of the following words:

"Sentence of death may be passed by a superior court only and shall be passed by such a court upon a person convicted before or by it of murder, and may be passed by such a court upon a person convicted before or by it of treason, kidnapping, childstealing or rape or robbery (including an attempt to commit robbery) if aggravating circumstances are found to have been present, or any offence, either at common law or under any statute, of housebreaking or attempted housebreaking with intent to commit an offence, if aggravating circumstances are found to have been present."

11. The following section is hereby substituted for section *three hundred and forty-four bis* of the principal Act:

"344*bis*. (1) Subject to the provisions of sub-section (2), whipping may be imposed by an inferior court only in the case of a conviction for:

(*a*) robbery or rape, or assault of an aggravated or indecent nature or with intent to do grievous bodily harm or with intent to commit any other offence;

(*b*) culpable homicide, bestiality or an act of gross indecency committed by one male person with another or any attempt to commit any such offence;

(*c*) breaking or entering or any attempt to break or enter any premises with intent to commit an offence, either under the common law or under any statutory provision, or theft of a motor vehicle (except where the accused obtained possession of the motor vehicle with the consent of the owner thereof), or theft or an attempted theft of goods from a motor vehicle or part thereof where the said motor vehicle or the said part thereof was properly locked, or receiving stolen property well knowing the same to have been stolen; or

(*d*) any statutory offence for which whipping may be imposed as a punishment.

"(2) No person shall be sentenced to whipping under this section for any offence if it is proved that he was sentenced to a whipping other than whipping referred to in section *three hundred and forty-five* within a period of three years before the date on which he is convicted of the said offence."

12. Section *three hundred and forty-four ter* of the principal Act is hereby repealed.

13. Section *three hundred and fifty-two* of the principal Act is hereby amended:

(*a*) by the substitution for paragraph (*a*) of sub-section (1) of the following paragraph:

"(*a*) postpone for a period not exceeding three years the passing of sentence and release the person convicted on one or more conditions [whether as to compensation, the rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss, submission to instruction or treatment or to the supervision or control (including control over the earnings or other income of the person convicted) of a probation officer as defined in the Children's Act, 1960 (Act No. 33 of 1960), compulsory attendance at some specified centre for a specified purpose, good conduct or otherwise] which the court may order to be inserted in recognizances to appear at the expiration of that period; or";

(*b*) by the addition of the following sub-section:

"(8) Any court which has under this section postponed the passing of sentence or suspended the operation of any sentence on condition that the person convicted shall submit himself to instruction or treatment or to the supervision or control of a probation officer, or shall attend at some specified centre for a specified purpose, may for good cause at any time during the period of postponement or suspension amend such condition."

14. Section *three hundred and fifty-six* of the principal Act is hereby amended by the substitution for paragraph (*b*) of the following paragraph:

"(*b*) the powers and duties of probation officers referred to in section *three hundred and fifty-two*, in relation to the supervision or control of persons whose sentences of imprisonment are suspended under the said section, or in respect of whom the passing of sentence is postponed under the said section, the conditions which shall be observed by such persons while on probation, the varying of such conditions and the compulsory payment by employers to the said probation officers of wages payable or to become payable by the employers to any such persons while on probation."

15. Section *three hundred and fifty-seven* of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section:

"(1) When any person is convicted by a superior court the court of a regional division or an inferior court with jurisdiction in civil cases, of an offence which has caused damage to or loss of property belonging to some other person, the court trying the case may, after recording the conviction and upon the application of the injured party or of the person conducting the prosecution acting on the instructions of such party, forthwith award him compensation for such damage or loss: Provided that:

(*a*) the court of a regional division shall not make any such award unless the compensation claimed does not exceed one thousand pounds;

(*b*) an inferior court with civil jurisdiction shall not make any such award unless the compensation claimed does not exceed five hundred pounds."

16. The Second Schedule to the principal Act is hereby amended by the insertion of the following Part after Part II:

"*Part II*bis

OFFENCES IN RESPECT OF WHICH THE ATTORNEY-GENERAL MAY UNDER SECTION *ONE HUNDRED AND EIGHT BIS* ORDER THAT THE ACCUSED SHALL NOT BE RELEASED ON BAIL OR UNDER SECTION *TWO HUNDRED AND FIFTEEN BIS* ISSUE A WARRANT FOR THE ARREST AND DETENTION OF A WITNESS

Sedition.

Murder.

Arson.

Kidnapping.

Childstealing.

Contravention of the provisions of paragraph (*a*), (*b*), (*b*)*bis*, (*b*)*ter*, (*c*), (*d*), (*d*)*bis* or (*d*)*ter* of section *eleven* of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), or that Act as applied by any other law.

Contravention of section *twenty-one* of the General Law Amendment Act, 1962 (Act No. 76 of 1962).

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

Treason.

Robbery (including an attempt to commit robbery), where the attorney-general is satisfied that aggravating circumstances were present.

Any offence, either at common law or under any statute, of housebreaking or attempted housebreaking with intent to commit an offence, where the attorney-general is satisfied that aggravating circumstances were present".

17. The Third Schedule to the principal Act is hereby amended by the substitution for the heading to Part II of the following heading:

"OFFENCES ON CONVICTION WHEREOF THE OFFENDER'S MOVEMENTS MAY BE RESTRICTED UNDER SECTION *THREE HUNDRED AND FIFTY-FIVE BIS.*"

THE SUPPRESSION OF COMMUNISM AMENDMENT ACT, 1965

Act No. 97 of 1965, assented to on 18 June 1965 [10]

1. Section *three* of the Suppression of Communism Act, 1950 (hereinafter referred to as the principal Act) [11] is hereby amended by the substitution for sub-paragraph (*ii*) of paragraph (*a*) of sub-section (1) of the following sub-paragraph:

"(ii) carry, be in possession of or display anything whatsoever indicating that he is or was at any time before or after the commencement of this Act an office-bearer, officer or member of or in any way associated with the unlawful organization; or."

2. Section *six* of the principal Act is hereby amended:

(*a*) by the addition to paragraph (*d*) of the word "of";

(*b*) by the insertion after paragraph (*d*) of the following paragraph:

"(*e*) is a continuation or substitution, whether or not under another name, of any periodical or other publication the printing, publication or dissemination whereof has been prohibited under this section."

3. Section *ten* of the principal Act is hereby amended by the substitution for paragraph (*a*)*ter* of sub-section (1) of the following paragraph:

"(*a*)*ter* Subject to the provisions of paragraph (*a*)*quat.* the provisions of paragraph (*a*)*bis* shall lapse on the 30th June, 1966."

4. The following section is hereby inserted after section *ten quat.* of the principal Act:

"10*quin.* (1) If the Minister is satisfied that, in the Republic or elsewhere, any person who was resident in the Republic advocates, advises, defends or encourages, or has advocated, advised, defended or encouraged the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object, or engages or has engaged in activities which are furthering or may further the achievement of any such object, the Minister may, without notice to any person concerned, by notice in the *Gazette* declare the provisions of paragraph (*g*)*bis* of section *eleven* applicable in respect of such first-mentioned person.

"(2) The Minister may in like manner withdraw any notice issued under sub-section (1)."

5. Section *eleven* of the principal Act is hereby amended:

(*a*) by the substitution for paragraph (*e*) of the following paragraph:

"(*e*) knowingly allows any premises or any other property whatsoever, situated in the Republic, to be used for the purposes of or in connection with any offence under paragraph (*a*), (*b*), (*b*)*ter*, (*c*), (*d*) or (*g*);"

(*b*) by the substitution for paragraph (*g*)*bis* of the following paragraph:

"(*g*)*bis* without the consent of the Minister or except for the purposes of any proceedings in any court of law records or reproduces by mechanical or other means or prints, publishes or disseminates any speech, utterance, writing or statement or any extract from or recording or reproduction of any speech, utterance, writing or statement made or produced or purporting to have been made or produced anywhere at any time by any person in respect of whom the provisions of this paragraph are applicable by virtue of a notice issued under section *ten quin.*, or whose name appears on any list in the custody of the officer referred to in section *eight*, or in respect of whom a prohibition to attend any gathering has, at any time before or after the

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[10] *Statutes of the Republic of South Africa, 1965.*

[11] For extracts from the Suppression of Communism Act, 1950, see *Yearbook on Human Rights for 1950*, pp. 300-306.

commencement of the Suppression of Communism Amendment Act, 1965, been issued under section *five* or *nine;*"

6. Section *twelve* of the principal Act is hereby amended by the insertion after sub-section (5) of the following sub-section:

"(5)*bis* A certificate purporting to have been signed by the officer referred to in section *eight,* to the effect that a name mentioned therein appears on a list in the custody of such officer shall, if such name corresponds substantially to that of an accused person in any prosecution under this Act or to that of any party to any civil proceedings under or arising from the application of the provisions of this Act, on its mere production in such prosecution or civil proceedings, be *prima facie* proof of the fact that the name of such accused person or of such party, as the case may be, appears on such list."

7. The following section is hereby substituted for section *seventeen* of the principal Act:

"17. The powers conferred by this Act upon the State President or the Administrator of the territory of South-West Africa, except the power conferred under sub-section (2) of section *two* in respect of an organization contemplated in paragraph (*e*) of the said sub-section or under section *six* by virtue of the provisions of paragraph (*e*) of the last-mentioned section, and the power to withdraw any proclamation or notice issued under this Act, shall not be exercised in relation to any person, organization or publication unless the Minister or, in the case of the powers conferred upon the Administrator of the said territory, the said Administrator has considered a factual report in relation to that person, organization or publication made by a committee consisting of three persons appointed by the Minister of whom one shall be a magistrate of a rank not lower than the rank of senior magistrate."

SPAIN

NOTE [1]

As was indicated in previous reports, all the rights proclaimed in the Declaration adopted by the United Nations General Assembly on 10 December 1948 have long been guaranteed under Spanish law.

Without going into a detailed historical analysis of our legal structure—if only because it was dealt with in earlier reports—we might recall that Spain pioneered in the defence of human rights with its "Laws of the Indies" and with the masterly work of Luis Vives and many other humanists who were born on its soil.

For that reason the Spanish State, faithful custodian of the Hispanic tradition, considers it not only a duty but a categorical imperative to comply with all the principles proclaimed in the above-mentioned resolution of the United Nations General Assembly. The human rights legislation enacted during the 1965 legislative session is summarized below.

1. Rights to Equality, Freedom, Security of Person and Social Security

In our State, equality before the law of all citizens, whatever their status, race or religion, is fully recognized in the fundamental Statute of Rights of the Spanish Citizen. It is hardly necessary to expatiate upon the contents of this very well known constitutional text.

As regards the principle of personal freedom, there is a traditional legal rule, recognized and applied in our legislation and jurisprudence, that no one may be convicted of an offence without having been heard and found guilty; clearly, therefore, security of person is fully guaranteed by the nation's courts.

A. With respect to freedom of opinion and the freedom of the citizen to engage in public activity, the legislation enacted in 1965 includes the following:

The Decree of the Presidency of the Government, dated 22 July 1965, institutes a general electoral census and makes the National Institute of Statistics responsible for its preparation.

Moreover, an Order of the Presidency dated 15 December 1965 amplifies the above-mentioned Decree and establishes the legal rule that the citizen has an inalienable right to file a petition if he has been excluded from the census.

It is clear that these two legal texts not only provide for the exercise of the right to political expression, but also ensure the possibility of redress.

This principle has been confirmed in related legal provisions of a more detailed kind, as follows.

The Decree of 18 February 1965, reaffirming the provisions of the statutes of the official associations of doctors of philosophy and letters, proclaims the right freely to elect the members of the governing board and the plenum of the National Council of Associations. This express stipulation not only promotes the right of association and representation granted by the State to each of the social classes composing the nation, but also reaffirms the freedom of action of the various professional associations.

Similarly, the National Youth Council, created by a Decree of 16 November 1961, is recognized in an Order of 30 April 1965 as "a fully representative, permanent, associative organ", whose purpose is to examine and discuss the problems of youth; this measure not only demonstrates the Spanish Government's interest in the urgent and universal problem of youth, but is one more instance of the democratic principle which governs all our legislation. Special mention should be made of the Decree of 5 April 1965, which officially recognizes the professional students' associations, in order that each sector of the university community may assume its own political and social responsibilities; it adds that, within the Spanish representative system "the students themselves must choose their own organs of participation and corporate representation, thus contributing not only to the better defence of their own interests, but also to improving the structure of the Spanish university". Article 8 of the same Decree states that the students shall be represented by their own elected delegates who shall sit in such representative organs as councils and boards as spokesmen for the students' interests.

The Order of 3 June 1965 (Ministry of Education) contains the following provisions, supplementing the above-mentioned Decree:

(I) In each institution of higher learning, there shall be established a student association,

[1] Note furnished by the Government of Spain.

whose officers shall be elected by the full membership.

(II) Elections to fill these posts shall be by nominal and secret ballot.

(III) The list of candidates shall be made public, and each student may vote for two candidates, *voting being obligatory (required by law).*

(IV) The elected officers shall remain in office for the duration of the academic year.

(V) During the third quarter of the academic year, the officers shall give an account of their administration to the assembled members of the association.

(VI) The presidents of the various district councils shall constitute the National Council of Student Associations.

A representative of the National Council of Student Associations, elected by the Council by secret ballot, shall sit on the Board of the Council for the Promotion of the Principle of Equality of Opportunity.

These measures relating to the student population are supplemented by the Order of 28 August 1965 (Ministry of Information and Tourism), which defines and authorizes a student Press. The legal existence and the democratic character of the student associations are thus established, and these associations are granted the appropriate means to express their ideas. The Order does not require the editor-in-chief of this Press to be a journalist (art. 7), and it provides that the editorial staff may be composed entirely of students (art. 8), although the editor-in-chief shall bear appropriate responsibility (art. 9) and may be held to account under the ordinary laws applicable to the Press (art. 2).

Actually the 1965 legislation providing for liberalization of political life in the universities supplements legislation enacted in 1964. Thus the Associations Act of 24 December 1964, and the Decree of 20 May 1965 which extends and amplifies it, provide that associations established for purposes of assistance, education, culture or sports, or for any other purpose tending to promote the common good, may be recognized as serving the public interest. They regulate the establishment of these associations, define their rights and privileges—notably preferential treatment as regards technical, advisory and financial (credits and subsidies) State aid, and stipulate that the associations must be consulted in the preparation of general measures for the common good. Finally, these texts authorize them to form a national federation and establish a register of associations in order to guarantee their official existence. This register is dealt with in great detail in the Order of 10 July 1965 issued by the Ministry of the Interior.

Freedom of expression is manifested also in freedom of instruction, since, in addition to the education offered and regulated by the State, instruction may be offered by private parties. Thus, for example, the Decree of 22 July 1965 (Ministry of Education) grants official status to the courses given at the non-State University of Navarra in its faculties of science, pharmacy, philosophy and letters and also in its advanced school or architecture. Of particular interest in this matter of the right to representation and freedom of opinion is the change in policy as regards film censorship. The old Classification and Censorship Board has been replaced by a new organ within the National Cinematographic Institute. The new Board not only serves as censor, but also provides information and proposes promotional measures for domestic films and cinematographic projects.

Interestingly enough, film censorship, which, of course, exists in every civilized State, is hedged about by a great many safeguards. Thus a decision of the Board requires a majority of the votes, and the voting always takes place after an oral debate. Reasons must be given for the decision, the censorship rules invoked for and against the decision being clearly indicated; and interested parties can appeal the decisions (articles 9 to 18 of the rules of the Board of Censorship and Film Evaluation, approved by an Order of 10 February 1965. The Board was established by a Decree of 14 January 1965).

B. As regards the right to equality, the Act of 21 July 1960 continues to serve as a guideline, and impressive amounts of State funds continue to be devoted to the promotion of equality of opportunity among citizens. Suffice it to say that the entire revenue from the tax on the incomes of individuals is used to give effect to the principle of equality of opportunity.

C. The right to security of person (article 3 of the Universal Declaration) is, as in the past, fully guaranteed under Spanish law.

Both on the national and on the international level, the Spanish State has been concerned with expanding its role as guarantor of the security of person in relation to the right to work (Labour Charter), workers' security and insurance for those who cease working because of age, sickness or accident. We shall not enumerate at this point the many collective agreements concluded in various industries (which will be given due consideration elsewhere). We would merely mention once again that the judicial administration of labour (labour courts) has been entrusted to the Spanish judiciary as the organ which determines the rights of the worker in labour relations, and that the basic administration has been entrusted to the National Institute of Social Welfare and the Health Insurance Board which for many years have been responsible for the welfare of workers. We cite below a few specific examples of what the Spanish Government has done in this area.

On 26 January 1965 Spain signed with France an agreement providing for the payment of family allowances to Spanish workers employed in France. Hence, it is obvious that the Spanish Government continues to recognize the right of its nationals to reside abroad even as it protects their social security rights.

On 24 August 1965 Spain signed another social security agreement with the Grand Duchy of Luxembourg. The agreement covers health, accident and unemployment insurance, family

allowances, etc., thereby furnishing further evidence that the Spanish Government respects the right of its nationals to live abroad, while continuing to provide them with the whole range of social benefits.

On 19 November 1965 an agreement with Chile for assisted migration was ratified, providing ample security for emigrants from Spain.

By Decree of 20 May 1965, Spain acceded to the 1960 International Convention for the Safety of Life at Sea. This Convention, which was ratified on 4 October 1965, contains provisions regulating the construction of ships, fire protection on ships, life saving appliances, radiotelegraphy and radiotelephony safety of navigation, carriage of dangerous goods, etc.

An air transport agreement between Spain and Luxembourg was signed on 23 June 1965.

The International Conventions of 25 February 1961 concerning Carriage by Rail were put into effect.

Again in 1965, Spain accepted the International Regulations for Preventing Collisions at Sea of 21 April 1964.

On 19 July 1965 Spain signed with Germany the agreement of 15 May 1964, amending the 1959 agreement concerning the social security of Spanish nationals working in Germany.

One more proof of the importance the Spanish Government attaches to this matter is the Act of 21 December 1965, which provides maintenance for the members of the Corps of Disabled Veterans who, for one reason or another, are not receiving pensions from the State.

Still another measure relating to the security of person is the regulation of the use of weapons fired by compressed air or other gas, approved by the Decree of 23 December 1965. In Spain, as in other countries, firearms may not be purchased without special authorization.

In view of the slight danger they present, weapons fired by compressed air or other gas were, until now, subject to no restrictions whatever. Nevertheless, the accidents which they have been causing have prompted the enactment of the above-mentioned regulation, which establishes certain restrictions on their use by minors, and requires compliance with elementary safety rules.

Safety requirements in the construction of dwellings are, in part, the subject of the circular of the Office of the State Counsel of the Supreme Court of 1 December 1965 which reminds the State Counsels of the High Courts (*Audiencias*) that negligence in these matters may be an offence under the criminal law.

2. Rights concerning the Family

It was stated in a previous report that the rights concerning the family proclaimed in article 16 of the Universal Declaration of Human Rights were scrupulously observed by the Spanish State; a description of the legislation dealing with these rights will also be found in past reports.

The Spanish State has retained its earlier legislation (Association of Heads of Families, the Act to Define the Basic Principles of Social Security of 28 December 1963, etc.), improved and amplified to cover matters not previously taken into account. Thus, when the electoral census is taken, special mention is given to heads of family (the family as a social unit), since they are granted full voting rights so that they may have their say on all national problems. This shows how important a part this right of the family plays in elections. Moreover, the family continues to receive various economic benefits for its better development in greater dignity (allowances, family bonuses, assistance to large families, etc.).

With regard to the family dwelling (National Housing Plan), it should be noted that, in its concern that this Plan should not be diverted from its original purpose, the State has enacted legislation requiring the beneficiary himself to occupy the dwelling, it has imposed rent controls, and it has prohibited the use by one person of two or more dwellings constructed with State aid (Decrees Nos. 1442, 1443, 1445 and 1446 of 3 June 1965).

Where dwellings and their construction are concerned, mention must also be made of the Circular of the Office of the Chief Counsel of the Supreme Court of 1 December 1965 which reminds the Chief Counsels of the High Courts (*Audiencias*) of their duty to prosecute and punish the criminal behaviour of those builders who, taking advantage of the social phenomena of urban growth and increased migration to the cities, seek to make an easy and excessive profit out of the need of many people for housing.

3. The Right to Work

In previous reports, the concern of all Spanish Governments with this matter was reviewed in its historical perspective.

In the course of 1965, a great deal of legislation was enacted to give effect to this right, as proclaimed in the Labour Charter.

The Ministerial Order of 20 February 1965 approved the investment plan (for 1965) of the National Labour Welfare Fund to the amount of 2,310 million pesetas.

Very important, in view of the social advance it represents in the world of labour, is the Decree of 15 July 1965 (Ministry of Labour), which amplifies the Act of 21 July 1962 allowing workers to share in the management of undertakings that have been legally established in the form of companies.

That Act provided for the gradual application of its stipulations, according to social conditions in the country; those stipulations being deemed unexceptionable, the above-mentioned Decree develops them further, its basic provisions being:

(*a*) Workers shall have a share in the management of any undertaking which has been legally established in the form of a company, a phrase used to exclude, with a view to protecting it, the so-called family firm—that bulwark of the

country's industry—provided that it has not been legally constituted as a company.

(*b*) The undertaking or company must, however, employ 500 or more workers steadily.

(*c*) There shall be at least one workers' representative on the board of directors in dealing with all questions relating to: working conditions, system of incentives and bonuses, vocational training, industrial safety and hygiene, special facilities (living quarters, co-operative stores, etc.), allocation of funds by the company to the workers, expansion or reduction of the undertaking, removal to another site and merger with other undertakings.

(*d*) The workers' representative shall be freely elected by the workers and, on his election, shall become a member of the works council.

(*e*) The administrative bodies of the undertaking shall not be considered legally constituted unless they include one or more workers' representatives.

(*f*) A special judicial order shall be required for the dismissal of the workers' representative by the undertaking or company.

(*g*) Moreover, by government decision, this principle of workers' representation may be applied to undertakings employing less than 500 workers.

This extremely important Decree which, together with the Act it amplifies, marks a great advance for the workers, is supplemented by various legislation on social matters. In the area of social security, for example, such legislation includes the Order of 20 August 1965 regulating the application of the social insurance and workers' mutual benefit schemes in the vegetable canning industry; the Order of 19 June 1965 establishing new regulations for the social security of the professional and auxiliary health personnel of the compulsory sickness insurance scheme; the Order of 2 December 1965 on social security in the citrus fruit industry; the Decree of 23 September 1965 on pensions and social security for civil servants holding special or temporary contracts; and various other provisions too numerous to mention.

As regards labour relations as such—the friction between workers and employers, between management and labour—the Spanish State has endeavoured to regulate them in such a way that, without prejudice to anyone's rights or to the workers' interests, such disputes would be reduced to the minimum.

Since the procedures for the conduct, conciliation and arbitration of collective labour regulations have been regulated specifically by the Decree of 20 September 1962, the Act of 21 December 1965 amended article 222 of the Criminal Code accordingly, by eliminating criminal regulations in labour disputes based strictly on labour grounds.

At present it can be said that labour relations are seldom an individual matter and are mainly governed by collective agreements. Thus, the Resolution of 18 December 1964 of the Directorate-General of Labour Relations approved a collective agreement and a wage increase in the perfume industry; the Order of 21 September 1965 approved the Labour Ordinance in the textile industry; the Resolution of 14 December 1965, also by the Directorate-General of Labour Relations, approved the collective agreement for the industrial refrigeration industry; another Resolution by the same Directorate-General (16 August 1965) approved the collective agreement, international in scope, relating to employees in savings funds and pawnbroking establishments. A collective agreement applying to workers in tobacco cultivation was approved on 9 March 1965; another, for the lumber industry, on 1 March 1965; and still another, for the resin industry, on 1 September 1965. In addition, agreements were approved for the meat industry (11 March 1965), the resin industry (June 1965), the shoe industry (June 1965), and the lye and dyeing industries, to mention only a few.

It should be noted that these collective agreements regulate not only the wage level but also vacations and other matters relating to the rights and security (personal and social) of the worker.

4. The Right to Education

What was said on this subject in previous reports is confirmed today in the light of the most elementary economic principles.

As far as the year 1965 is concerned, two general statements should be made to begin with: that the budget for that year provided for an increase of 807 million pesetas for education and that the sum of 2,200 million pesetas was allocated to the investment plan of the Fund for the Promotion of the Principle of Equality of Opportunity.

The Spanish Government is making a very strenuous effort in this field. It is sufficient to point out that the Ministry of Education's share in the general budget is second only to that of the Ministry of Public Works.

A survey of the legislation on this subject must include the following.

(A) *Primary education*

The Decree of 10 August 1963 of the Presidency of the Government, which initiated a national literacy campaign, was fully implemented throughout 1965.

Primary education, formerly regulated by a 1945 law, has been drastically reformed by the Act of 21 December 1965. The first significant innovation concerns the primary teacher training programme, since in view of the advances made in general knowledge and in teaching methods, it was decided to broaden the knowledge base of primary teachers, who are now required to pass an upper baccalaureate examination, followed by two years of professional training and a period of practice teaching.

The principle of compulsory schooling for eight years, from the ages of six to fourteen has been maintained; in the event of failure to com-

ply with this principle, the parents, guardians, and even the employing undertakings are to be held responsible.

Primary education is free, as of right, for all Spanish citizens and for foreigners as well; this includes books and registration.

The recently introduced home schools are being continued; they offer board and lodging to their pupils under conditions approaching those in the home, in areas with a widely scattered population and inadequate transport. These home schools were set up by a Decree of 7 July 1965 as a necessary measure to ensure the total enrolment of the school population.

As regards the curriculum, the Order or 8 July 1965 approved the national study plans for the primary schools.

As to special education, the following measures were adopted in 1965.

The Decree of 13 May 1965 co-ordinates the activities of the Directorate-General of Health and the Directorate-General of Primary Education with regard to aid for subnormal children and young people who, because of their physical, psychological or scholastic deficiency or maladjustment, need specialized education, clinical services, and appropriate assistance.

The Decree of 23 September 1965 lays down regulations governing the activities of the Ministry of Education with regard to *special education*. That vast undertaking ranges from the training of specialized teachers to a more logical and thorough analysis of the entire subject.

Lastly, the pace of the national literacy campaign, initiated by the Decree of the Presidency of 10 August 1963, has not slackened. Thus, for example, the Resolution of 21 January 1965 issued by the Directorate-General of Primary Education lays down regulations concerning classes for adults who have just learned to read and write; it establishes such classes in fifty-one provincial capitals and specifies that newly literate persons over fourteen years of age may attend them.

(B) *Secondary education*

The Spanish State continued to display great interest in this subject during 1965.

The Resolution of 15 July 1965 of the Directorate-General of Secondary Education lists the legal provisions in force concerning State secondary educational institutes.

The Act of 17 July 1965 vastly increases the teaching staff in the State secondary educational institutes, in compliance with the provisions of article 49 of the Act regulating secondary education, which made it plain that this very large increase in the number of teachers was an absolute necessity. Under the new Act, the following increases are made in the teaching staff:

1. Eight hundred and sixty-six new staff teachers in the State secondary educational institutes;

2. Eight hundred and sixty-six new associate teachers, forty-five teachers of religion and as many associate teachers of religion and spiritual directors.

The Decree of 22 July 1965 establishes the Secondary Teachers' Training School with a view to training teachers for secondary schools, vocational secondary schools, teacher training schools, industrial schools, secondary-level business schools, secondary-level technical schools, etc.

In this mighty educational effort the workers could not be overlooked. Accordingly, the Order of 17 February 1965 (Ministry of Education), elaborating on the Decree of 17 January 1963 concerning evening baccalaureate courses for workers, created the following new establishments:

1. Fifty new centres or institutes offering evening courses for men;

2. Sixty-one new centres or institutes offering evening courses for women;

3. Fifty-three new sub-sections of institutes offering evening courses for men;

4. Fifty-nine new sub-sections of institutes offering evening courses for women.

(C) *University education*

University education was again substantially extended in 1965. Attention may be drawn, among the many laws relating to the university, to the Act of 17 July 1965 on the structure of university faculties and their teaching staff. The reason for its enactment is the continued growth of the number of students, which until 1965 was admittedly not matched by corresponding increases in the number of professors.

The Act introduces two new academic concepts: the "department", and "acting professors". The former is defined as a structural unit of the university which groups together the persons and facilities devoted to teaching, training and research in a given discipline or related disciplines. The acting professors constitute an intermediate category between the titular professors and the associate professors.

Lastly, after laying down regulations concerning the teaching staff, the Act provides for the financing of the innovations it introduces.

By the Act of 17 July 1965, allocations are made for the remuneration of 150 professors teaching in the universities; the Act of 21 December 1965 increases the manning-table of associate professors in universities by 200 additional allocations. Another Act of 21 December 1965 increases by 500 the allocations for lecturers in practical classes, clinics and laboratories at universities.

The Decree of 16 June 1965, which proclaims that the university has a most important social function to fulfil and that the university and society are inseparably linked, establishes a council in each university district which is to be primarily responsible for bringing society and the university closer together.

This survey, together with the statement at the beginning of this report concerning student asso-

ciations and the student Press, demonstrates clearly the special attention given by the Spanish State to education at all levels.

(D) *Technical education*

The Ministry of Education has continued its unremitting efforts in this sphere also.

The Decree of 14 August 1965 determines the titles and special competence of graduates of technical schools and, at the same time, lays down regulations concerning the specialities to be taught in these schools.

The Order of 29 July 1965 lays down regulations concerning the teaching of languages in the higher technological institutes, while the Order of 24 August 1965 approves the curricula of secondary-level technical schools.

(E) *Social measures*

In this sphere the following are worth noting:

The Decree of 18 February 1965, extending the school insurance instituted by the Act of 17 July 1953 to Hispano-American, Portuguese, Philippine and Andorran students studying in Spain.

The Decree of 18 February 1965, extending that insurance to Brazilian students in Spain.

Allocations for the construction of student residence centres are the subject of further regulation in the Order of 23 January 1965, which is intended to promote the construction work and, in particular, to encourage the provision of rooms reserved for scholarship students by granting low-cost loans to builders who give preferential attention to such students, without prejudice to any aid which they may obtain from the National Fund for the Promotion of the Principle of Equality of Opportunity.

(F) *Cultural agreements*

On 9 June 1965 Spain and Brazil signed an Agreement to promote direct contacts between their universities through the exchange of professors, lecturers, research workers and students. The Agreement also established prizes, bearing the names of Machado de Assis and Cervantes, for the best book published in the preceding two-year period.

Another Agreement, signed on 27 April 1964 between Spain and Guatemala, is similar in scope and importance to the above-mentioned Agreement with Brazil.

Lastly, on 8 April 1965 Spain signed the international agreement relating to the preservation of the temples of Abu Simbel (Egypt) from inundation as a result of the construction of the Aswan High Dam.

(G) *Intellectual property*

Spain continues its policy of protecting the rights of intellectuals. Thus, the Order of 22 February 1965 declares that there shall be copyright in cinematographic productions and lays down appropriate regulations.

The Registry of Intellectual Property was established in Spain by an Act of 1879; now, in order to give better protection to copyright in its more technical aspects, by the Decree of 15 July 1965, the Registry has been placed in charge of an official of the Corps of Property Registrars who will bear the title of General Registrar of Intellectual Property.

5. Other Legislation

Lastly, Spain adheres faithfully to the most fundamental of human rights. Thus, in matters of criminal law it endeavours to temper the punitive principle (correction of the criminal and protection of society) with modern principles relating to prison life and the treatment of offenders. Thus, the Decree of 22 July 1965, proving once again that the Spanish penal system is more concerned with prevention than with punishment, generously provides for a general extraordinary remission of penalties, thereby bringing comfort to the prisoner and advancing his return to family and community life.

The occasion for this magnanimous gesture is the jubilee year of Compostela; penalties and corrective measures entailing deprivation of liberty which have been or may be imposed for offences and petty offences, covered by the ordinary Criminal Code, the Code of Military Justice and the special criminal laws and regulations, committed before 21 July 1965 are remitted.

This remission of penalties is very broad in scope, since it calls for the following reductions:

(I) Penalties and corrective measures imposing a term of imprisonment of two years or less are reduced *by one-half*;

(II) Penalties of more than two but not more than twelve years are reduced *by one-fourth*;

(III) Penalties of more than twelve but not more than twenty years are reduced *by one-fifth*;

(IV) Penalties of twenty years or more are reduced *by one-sixth*;

(V) Penalties permanently revoking a motor car driving licence are commuted to penalties revoking it *for six years* only.

In addition, the amendment to article 222 of the ordinary Criminal Code, excluding matters relating to labour disputes from its scope continues in force; the Decree of 28 March 1963 concerning the commutation of penalties of hard labour, which reduced to six months and one day the two-year period formerly required to qualify for commutation, also remains in force. It will be seen from the foregoing that the Spanish State continues to enact legislation on this subject which is in accordance with the most progressive and humanitarian standards.

These are the principal legal provisions promulgated by the Spanish Government during 1965 which have a bearing on the human rights proclaimed by the United Nations General Assembly on 10 December 1948.

SUDAN

NOTE [1]

The Sudan has contributed to the *Yearbook on Human Rights for 1958, for 1959* and *for 1960*. The contribution for the 1958 *Yearbook* had, however, contained Constitutional Order No. 3 of 17 November 1958, [2] which reads as follows:

1. The Sudan Transitional Constitution shall be suspended;
2. The existing Sudanese Parliament constituted by the provisions of the Transitional Constitution shall be dissolved;
3. All existing political parties shall be dissolved and the formation of any new political parties shall be unlawful;
4. All laws in force before the suspension of the Sudan Transitional Constitution shall continue in force until repealed or amended by any appropriate authority.

Since the publication of those issues of the *Yearbook*, important developments have taken place in the Sudan as a direct result of the October 1964 Revolution which ousted the Military Régime, cancelled Constitutional Order No. 3 of 17 November 1958, restored the Constitution with the necessary amendments and instituted Constitutional guarantees to all individuals, in accordance with the provisions of an All Party National Charter concluded on 30 October 1964, which remained valid until June 1965, with the exception of a minor amendment by which President Ferik Ibrahim Abboud resigned from office in November 1964 and the Supreme Commission provided for in Chapter III of the Transitional Constitution (amended 1964) assumed its full Constitutional responsibilities.

In June 1965, a democratically elected Government on the basis of the Constituent Assembly Elections Act, 1965 assumed office.

The following will be included in the section on the Sudan in the United Nations *Yearbook on Human Rights for 1965:*

(1) The National Charter (summary);

(2) The Sudan Transitional Constitution (amended 1964);

(3) The Constituent Assembly Elections Act (1965);

(4) The Political Segregation Act 1965;

(5) The Civil Servants (Amendment) Rules 1965.

[1] Note and texts of The National Charter and The Sudan Transitional Constitution (amended 1964) furnished by the Government of the Republic of the Sudan.

[2] For extracts from Constitutional Order No. 3 of 17 November 1958, see *Yearbook on Human Rights for 1958*, p. 209.

THE NATIONAL CHARTER

SUMMARY

The National Charter was concluded after the Revolution of 21 October 1964 and declared to the nation of the Sudan by the Prime Minister on 30 October 1964.

It had been agreed between the representatives of the Armed Forces and those of the United National Front that a transitional government be established in accordance with the Transitional Constitution of 1956. It had also been agreed that President Ferik Ibrahim Abboud be Head of State and that he was to exercise the powers previously exercised by the Supreme Commission with the proviso that he was to do so in consultation with the Council of Ministers. The agreement stipulated that the President was, moreover, to conduct all matters relating to the Armed Forces.

This order would end by the conducting, under the auspice of an independent commission, of free general elections not later than the end of March 1965. The elections would lead to the formation of a Constituent Assembly which would shoulder the responsibility of appointing a representative government and of making a permanent constitution. Until the making of the permanent constitution, the Assembly would legislate for the country in accordance with the provisions of the Transitional Constitution. During

this period the Transitional Government would legislate by provisional orders which would be subject to return by the President if passed by less than a two-thirds majority of the Council of Ministers.

Agreement had also been reached on the following matters:

1. The liquidation of the present military régime;
2. The setting off of common freedoms as freedom of the press, freedom of speech, and freedom of organization and association;
3. The lifting of the state of emergency and the repeal of all laws fettering liberties in areas where there are no security risks;
4. Making more secure the independence of the Judiciary;
5. Making more secure the independence of the University;
6. The release of all political detainees and of civilians imprisoned in political cases;
7. The adoption by the Transitional Government of a foreign policy against colonialism and military alliances;
8. The formation of a Court of Appeal of not less than five judges in which shall vest the judicial and administrative powers of the Chief Justice; and
9. The formation of a law revision committee for the purpose of proposing new laws consistent with our traditions.

THE SUDAN TRANSITIONAL CONSTITUTION

(Amended 1964)

WHICH IS AN INSTRUMENT consisting of a fundamental law by which the Republic of the Sudan is to be governed and by which there shall be established a Constituent Assembly for the making of a Permanent Constitution.

Pursuant to the unanimous agreement of the People of the Republic of the Sudan and in accordance with their will this Transitional Constitution has been made for action.

Chapter I

GENERAL

1. This Instrument shall be known and cited as The Sudan Transitional Constitution (Amended 1964).

2. (1) The Sudan shall be a Sovereign Democratic Republic.

(2) Its territory shall comprise all territories within its international boundaries.

3. The provisions of this Constitution shall prevail over all other laws, existing and future, and such provisions thereof as may be inconsistent with the provisions of this Constitution, shall, to the extent of such inconsistency, be void.

Chapter II

FUNDAMENTAL RIGHTS

4. (1) All persons in the Sudan are free and are equal before the law.

(2) No disability shall attach to any Sudanese by reason of birth, religion, race or sex in regard to public or private employment or in the admission to or in the exercise of any occupation, trade, business, or profession.

5. (1) All persons shall enjoy freedom of conscience, and the right freely to profess their religion, subject only to such conditions relating to morality, public order or health as may be imposed by law.

(2) All persons, shall have the right of free expression of opinion, and the right of free association and combination subject to the law.

6. No person may be arrested, detained, imprisoned or deprived of the use or ownership of his property except by due process of law.

7. All persons and associations of persons, official or otherwise, are subject to the law as administered by the Courts of Justice, saving only the established privileges of Parliament.

8. Any person may apply to the High Court for protection or enforcement of any of the rights conferred by this Chapter and the High Court shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the said rights.

9. The Judiciary shall be independent and free from interference or control by any organ of the Government executive or legislative.

Chapter III[3]

SUPREME COMMISSION

10. THE CONSTITUENT ASSEMBLY shall elect five persons who shall together constitute the Supreme Commission.

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[3] The provisions of Chapter III which were passed on the thirtieth day of October, and then suspended by the removal of Ferik Ibrahim Abboud on the 15th day of November, 1964 were as follows:

Chapter III

HEAD OF THE STATE

10. The Kaid-al-Amm of the Armed Forces or the person acting for him shall be the Head of the State.

(Continued on next page.)

Provided that the persons elected by the Council of Ministers on the 3rd day of December, 1964, shall constitute the Supreme Commission until the Constituent Assembly is convened.

11. The Supreme Commission shall be the highest constitutional authority in the Sudan and in it shall vest the supreme command of the Armed Forces of the Sudan.

12. Except as otherwise expressly provided in this Constitution, the Supreme Commission in the discharge of its functions under this Constitution or under any other law shall act on the advice of the Council of Ministers.

13. The members of the Supreme Commission, shall, before entering upon office, make and subscribe before the Constituent Assembly, an oath or affirmation, in the form set out in the Schedule to this Constitution.

14. The Constituent Assembly shall elect one of the members of the Supreme Commission to be the President of the Supreme Commission.

15. Three members of the Supreme Commission shall constitute a quorum for a meeting.

16. In case of a difference of opinion among the members, the majority decision shall prevail.

17. The Supreme Commission shall have the power, on the advice of the Council, to grant a free or conditional pardon to any convicted person.

18. The authority of the Supreme Commission shall be signified under the hand and seal of its President.

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11. The Head of the State shall be highest constitutional authority in the Sudan.

12. Except as to what has been expressly provided for in this Constitution, and except as to military affairs concerning the Armed Forces, the Head of the State in the discharge of his functions under this Constitution or under any other law, shall act on the advice of the Council of Ministers.

13. The Head of the State shall, before holding his office make and subscribe before the Council of Ministers, the Chief Justice, Grand Kadi and members of the High Civil and Sharia Courts, an oath or affirmation in the form set out in the Schedule.

14. The Head of the State shall have the power, on the advice of the Council of Ministers, to grant a free or conditional pardon to any convicted person.

15. The Head of the State shall cease to hold office in the following events, namely:

(*a*) Upon his death;

(*b*) If he is adjudged bankrupt or if his property becomes subject to a composition or arrangement with creditors;

(*c*) If he is convicted of an offence punishable with imprisonment for a period of not less than six months;

(*d*) If he is medically certified to be insane;

(*e*) If he gives written notice of his resignation from office.

16. The salary of the Head of the State shall be LS 2,200 per annum.

17. The validity of the provisions of this Chapter shall cease on the formation of the Constituent Assembly and from that date the provisions of Chapter III of the Transitional Constitution, Amended 1964, shall apply with the necessary modifications.

19. (1) A member of the Supreme Commission shall cease to hold office in the following events, namely:

(*a*) Upon his death.

(*b*) If he is adjudged bankrupt or if his property becomes subject to a composition or arrangement with creditors.

(*c*) If he is convicted of an offence punishable with imprisonment for a period of not less than six months.

(*d*) If he is medically certified to be insane.

(*e*) If he gives written notice of his resignation from membership.

(2) Any question which may arise as to whether any member has become subject to any of the disqualifications specified in the preceding sub-title shall be decided by the other members of the Supreme Commission and the Chief Justice and their decision shall be final.

(3) Any vacancy on the Supreme Commission shall be filled in by election by the Constituent Assembly.

20. The salaries of the members of the Supreme Commission shall be LS 2,200 per annum.

21. The Supreme Commission may make rules to regulate its procedure.

22. (1) When a member of the Supreme Commission is to be impeached for violation of the Constitution, the charge shall be preferred by the Constituent Assembly.

(2) No such charge shall be preferred except in writing signed by not less than one-fourth of the total members of the Constituent Assembly.

(3) When a charge has been so preferred the Constituent Assembly shall investigate the charge or cause the charge to be investigated.

(4) After such investigation the charge shall be considered by the Constituent Assembly, and if a resolution is passed by a three-quarters majority of the then members declaring that the charge has been sustained, such resolution shall have the effect of removing the member from the Supreme Commission as from the date on which the resolution is so passed.

(5) When a member of the Supreme Commission is so charged, he shall have the right to appear and defend himself in person.

Chapter IV

THE EXECUTIVE [4]

23. The Supreme Commission on the advice of the Prime Minister shall appoint not less than

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[4] This Chapter of the Constitution passed on the 30th day of October, 1964 included the following Article:

"The Head of the State shall appoint as Prime Minister such person as from time to time be elected by the Council from amongst its members."

This Article has exhausted its purpose after the formation of the First Government.

ten nor more than fifteen Ministers to Departments, or Ministries without Portfolio, of whom not less than two Ministers in each Council shall be members of the Constituent Assembly representing Southern Constituencies. Provided that the Supreme Commission may at its discretion dispense with such last-mentioned requirement if it is at any time satisfied that the right of special representation on the Council hereby granted in respect of the Southern Provinces is being abused.

24. (1) No person shall be appointed Minister unless he is qualified for membership of the Constituent Assembly.

(2) A person who is party to an existing contract with the Government shall not be eligible for appointment unless he shall have disclosed to the Prime Minister the existence and nature of such contract and of his interest therein, and either the Prime Minister shall have raised no objection thereto, or he shall at the request of the Prime Minister have terminated his interest therein.

25. Every Minister shall on appointment take an oath or make a declaration before the Supreme Commission in the form set out in the Schedule to this Constitution.

26. (1) The Prime Minister and other Ministers shall together constitute a Council of Ministers, which shall be responsible to the Constituent Assembly for the executive and administrative functions of the Government.

(2) The Council of Ministers shall assist the Supreme Commission and offer to it any advice respecting the performance of its functions under this Constitution or any other law.

27. Ministers shall be individually responsible to the Prime Minister for the conduct of their Ministries.

28. (1) The Prime Minister shall be President of the Council, and if present shall preside over its meetings.

(2) The Prime Minister may appoint a member of the Council to preside in his absence, and in default of such appointment, the Council shall elect a person to preside at each such meeting.

29. Unless more than half the total number of Ministers are present at a meeting, there shall not be a quorum, and no business save that of adjournment shall be transacted thereat.

30. (1) The Prime Minister shall cease to hold office in the following events, namely:

(*a*) if he shall cease to be qualified for membership of the Constituent Assembly,

(*b*) upon his death,

(*c*) if he is convicted of an offence punishable with imprisonment for a period of not less than 6 months,

(*d*) on acceptance by the Supreme Commission of his resignation, duly tendered in writing,

(*e*) upon the first sitting of the first session of the Constituent Assembly.

(2) A Minister shall cease to hold office in the following events, namely:

(*a*) if he shall cease to be qualified for membership of the Constituent Assembly;

(*b*) upon his death;

(*c*) if he is convicted of an offence punishable with imprisonment for a period of not less than 6 months;

(*d*) if he shall place his resignation in the hands of the Prime Minister for submission to the Supreme Commission and the Supreme Commission on the advice of the Prime Minister shall accept the same;

(*e*) if his appointment shall be terminated by the Supreme Commission on the advice of the Prime Minister; or

(*f*) if the Prime Minister shall cease to hold office.

31. If a Minister ceases to hold office, the vacancy may be filled by appointment made by the Supreme Commission on the advice of the Prime Minister.

32. The salaries to be paid to the Prime Minister and other Ministers shall be those payable immediately before the commencement of this Constitution.

33. The Council may make standing orders for the regulation and orderly conduct of its proceedings and the despatch of its business, including the determination of the places and times at which the Council shall meet, the conditions under which persons not members of the Council may be invited to attend and address meetings thereof, and the appointment and duties of officials ond servants of the Council.

34. (1) The proceedings and deliberations of the Council shall be secret, and every Minister shall be under an obligation not to disclose the same outside the Council Chamber. Provided always that a Minister may be expressly authorized by the Council in the exercise of his official duties to make public any decision of the Council.

(2) Ministers shall so conduct themselves in office that no conflict of duty or interest shall arise, or appear to arise, between their official and their private duties and interests; and in particular they shall not make use of their official positions for private advantage, or to further private interests.

(3) A Minister who commits a breach of his obligations hereunder shall be liable to have his appointment terminated by the Supreme Commission on the advice of the Prime Minister; and may, if the breach is capable of remedy, be called upon by the Prime Minister to remedy the same as a condition of retaining his appointment. Provided that any such action by the Supreme Commission or the Prime Minister shall be without prejudice to any other proceedings which may lie in respect of such breach against the Minister.

35. It shall be the duty of the Prime Minister to communicate to the Supreme Commission all decisions of the Council (other than decisions

on purely formal or routine matters) relating to the administration of the Sudan, or to proposed legislation and to give to the Supreme Commission all such information relating thereto as the Supreme Commission may from time to time require.

(36) (1) The Supreme Commission and the Council of Ministers shall be the legislative authority during the transitional period.

(2) Legislation shall be made by Provisional Orders to be passed by the Council and then submitted to the Supreme Commission for approval. Provided that the Supreme Commission shall have the right to return any Order not passed by a two-thirds majority of the Council.

(3) On receipt of the assent of the Supreme Commission the Provisional Order shall have the same force of an Act.

(4) The Council shall submit every Provisional Order made under this Constitution or under the Central Council Act, 1962, which remained in force to the Constituent Assembly when it is in session for confirmation or rejection as soon as practicable.

(5) When the Provisional Order is confirmed by a resolution of the Constituent Assembly it shall thereupon become an enforceable Act.

(6) If the Constituent Assembly refuses to confirm the Provisional Order, the Order shall forthwith lapse and cease to have effect, but without prejudice to the right of the Council to introduce a new Bill to the same or similar effect.

(7) The lapse of any such Order shall not have a retrospective effect.

37. (1) All executive action of the Government of the Sudan shall be expressed to be taken in the name of that Government.

(2) Orders and instruments made and executed in the name of the Government shall be authenticated in such manner as may be specified in rules to be made by the Council and the validity of any order or instrument so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Government of the Sudan.

(3) The Council shall make rules for the more convenient transaction of the business of the Government of the Sudan, and for the allocation among Ministers of the said business.

38. Except as otherwise provided by this Constitution the recruitment, and conditions of service of persons appointed to the Public Services of the Government of the Sudan or to any other posts, shall be regulated by law.

Provided that until such law is so made, the Council shall, subject to the provisions of this Constitution, make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts; and until such rules have been made by the Council the regulations governing such matters, existing immediately before the coming into force of this Constitution, shall continue in force.

39. The validity of this Chapter shall cease on the expiration of the Transitional Period and from that date the provisions of Chapter IV of the Transitional Constitution of Sudan 1956 subject to such amendments as may be necessary, shall apply.

Chapter V

THE LEGISLATURE

40. The provisions of this Chapter and Chapter VI shall apply to the Constituent Assembly established on the expiration of the Transitional Period.

41. The Constituent Assembly shall consist of one elected House.

42. The Supreme Commission and the Constituent Assembly shall together constitute the legislature for the Sudan.

43. (1) Elections to the Constituent Assembly shall be conducted under the supervision, direction and control of an independent Election Commission appointed by the Supreme Commission in consultation with the Council.

(2) The powers and duties of the Election Commission shall be such as may be laid down by the Council by law.

44. Sudanese who are not less than 30 years of age shall be eligible for membership of the Constituent Assembly.

45. Every member of the Constituent Assembly shall, before taking his seat, take an oath or make a declaration in the form set out in the Schedule to this Constitution, before the Speaker and, in the case of the Speaker before the assembled members of the Constituent Assembly.

46. (1) The following persons shall be disqualified from membership of the Constituent Assembly:

(*a*) Persons who hold an office of profit under the Government of the Sudan other than an office declared by law not to disqualify its holder.

(*b*) Undischarged bankrupts or persons whose property is subject to a composition or arrangement with creditors.

(*c*) Persons who have within the past seven years been sentenced in cases other than political to a term of imprisonment for a period of not less than two years.

(*d*) Persons who have within the past seven years been convicted of a corrupt practice or any abetment thereof at any Parliamentary or Local Government elections.

(*e*) Persons of unsound mind.

(*f*) Illiterate.

(2) For the purpose of this Article a person shall not be deemed to hold an office of profit under the Government of the Sudan by reason only that he is a Minister.

47. The seat of a member of the Constituent Assembly shall become vacant in any of the following events:

(*a*) Upon his death;

(*b*) If without leave of the Constituent Assembly he shall be absent from 25 consecutive sittings;

(*c*) If he shall become subject to any of the disqualifications specified in the preceding Article;

(*d*) If any other person is convicted of any corrupt practice carried out on his behalf or with his knowledge or connivance in respect of the election at which he was elected;

(*e*) If he shall give to the Speaker of the Constituent Assembly written notice of his resignation from membership.

48. Whenever the seat of an elected member becomes vacant a fresh election shall be held to fill the vacancy in accordance with the procedure appropriate to such seat.

49. Any question which may arise as to the right of any person to be or remain a member of the Constituent Assembly shall be referred to its Speaker who may if he thinks fit submit the same to the Civil High Court for determination.

50. (1) The Constituent Assembly shall have a Speaker to be elected by its members from amongst themselves or from amongst persons qualified for its membership.

(2) There shall be a Deputy Speaker of the Constituent Assembly elected from amongst its members. He shall preside at the meetings of the Constituent Assembly in the absence of the Speaker.

(3) The Speaker or the Deputy Speaker may, at any time by writing under his hand addressed, in the case of the Speaker to the Deputy Speaker, and in the case of the Deputy Speaker, to the Speaker, resign his office; and may be removed from office by a resolution of the Constituent Assembly passed by a majority of all the then members of that Constituent Assembly.

(4) The salaries to be paid to the Speaker and Deputy Speaker shall be such as may from time to time be laid down by the Constituent Assembly by law.

Provided that their salaries shall not be varied to their disadvantage during the term of their office.

51. (1) There shall be a Clerk of the Constituent Assembly appointed by its Speaker and confirmed by a two-thirds majority of the members of the Constituent Assembly.

(2) The Clerk of the Constituent Assembly shall not be removed from office except by order of the Speaker made in pursuance of a recommendation to that effect passed by a two-thirds majority of the members of the Constituent Assembly.

52. The Supreme Commission shall on the advice of the Prime Minister appoint the date and place for the commencement of each session of the Constituent Assembly. Provided that the Constituent Assembly shall be summoned by the Supreme Commission to meet once at least in every year, and so that the commencement of a new session shall be appointed to take place within three months of the last sitting of the preceding session.

53. (1) The Constituent Assembly shall continue for a period of two years from the beginning of its first session, and shall not be subject to dissolution.

(2) The Constituent Assembly shall make and pass the permanent Constitution.

54. Members of the Constituent Assembly who are not Ministers shall be entitled to receive such salaries and allowances for their services as may from time to time be laid down by the Constituent Assembly by law.

55. Two-fifths of the members of the Constituent Assembly shall constitute a quorum.

56. Subject to the provisions of their respective Standing Orders, proceedings in the Constituent Assembly shall be conducted in the Arabic language, but without prejudice to such use of the English language as may be convenient.

57. Subject to the provisions of this Constitution and of any Standing Orders made hereunder, there shall be freedom of speech in the Constituent Assembly and no member shall be liable to any proceedings in any Court in respect of anything said or of any vote given by him in any Committee thereof.

58. (1) The Constituent Assembly shall be entitled to hold debates and pass resolutions on any subject.

(2) Resolutions may, if the Constituent Assembly thinks fit, be submitted to the Council for consideration.

59. A member of the Constituent Assembly may, subject to its Standing Orders, address questions on any subject to the Council or the Minister concerned.

60. Every Minister shall have the right to speak in and otherwise take part in the proceedings of the Constituent Assembly and any committee of which he may be appointed a member.

61. (1) Subject to the provisions of this Constitution, all questions proposed for decision in the Constituent Assembly, shall be determined by a majority of the votes of the members present and voting, except in case of the permanent Constitution where two-thirds majority is necessary.

(2) The Speaker shall have neither original nor casting vote.

62. The Speaker of the Constituent Assembly shall by order prescribe Standing Orders for the regulation and orderly conduct of the proceedings of the Constituent Assembly and the despatch of its business, including provisions for the setting up of such standing, select, or other committees as may from time to time appear necessary or expedient; the Constituent Assembly

may thereafter from time to time add to, amend or revoke such Standing Orders.

63. The validity of any proceedings in the Constituent Assembly shall not be called in question before any Court or other authority on the ground of any alleged irregularity of procedure.

64. No treaty, agreement or convention with any other country or countries or any decision made in any international convention, association or other body, shall have effect in the Sudan unless ratified and affirmed by the Constituent Assembly by law.

Chapter VI

LEGISLATION

65. (1) Legislation shall be initiated by Bill or by Provisional Order.

(2) Subject to the provisions of this Article, a Bill shall not become law unless it has been passed by the Constituent Assembly either without amendment, or with amendments, and has received the assent of the Supreme Commission. On receipt of such assent the Bill shall become law as an Act.

(3) If a Government Bill is passed by the Constituent Assembly with amendments which are not acceptable to the Council, the Council may withdraw the Bill.

66. The Supreme Commission may send messages to the Constituent Assembly, whether with respect to a Bill then pending in the Constituent Assembly or otherwise, and the Constituent Assembly shall with all convenient despatch, consider any matter required by the message to be taken into consideration.

67. (1) If at any time when the Constituent Assembly is not sitting the Council shall resolve that the passing of any Government legislation is a matter of urgency, the Council may make a Provisional Order enacting the same, and submit such Order to the Supreme Commission for assent.

(2) On receipt of such assent, the Provisional Order shall have the same force and effect as an Act made by the Constituent Assembly.

(3) Every such Order shall be submitted by the Council to the Constituent Assembly for confirmation or rejection as soon as practicable.

(4) If the order be confirmed by resolution of the Constituent Assembly it shall thereupon become an Act.

(5) If the Constituent Assembly refuses to confirm the Provisional Order, the Order shall forthwith lapse and cease to have effect, but without prejudice to the right of the Council to introduce a new Bill to the same or a similar effect.

(6) Any enactment repealed or amended by a Provisional Order shall, as from the date of the lapse of such Order, be revived and have effect as if such Order had not been made.

(7) The lapse of any such Order shall not have retrospective effect.

68. Provisional Orders prior to the date of the commencement of this Constitution which have not been confirmed by the Central Council shall be deemed to have been made under this Constitution and shall be dealt with in accordance with the provisions of sub-Articles (2) to (5) of the preceding Article.

Chapter VII

FINANCE, PROPERTY, CONTRACTS, SUITS

69. In this Chapter the word "year" means the financial year, which shall be the twelve months ending on the 30th day of June of each calendar year.

70. The annual budget, which shall consist of estimates of revenue and expenditure (other than expenditure from reserves), shall be prepared by the Minister of Finance and shall, when passed by the Council be laid before the Constituent Assembly.

71. (1) The proposals of the Council for all such expenditure (other than expenditure hereinafter declared to be excepted expenditure) shall be submitted to the vote of the Constituent Assembly by means of an Appropriation Bill which shall contain estimates under appropriate heads for the several services required.

(2) The following expenditure shall be excepted expenditure and shall not be submitted to the vote of the Constituent Assembly but shall be paid out of revenue namely:

(*a*) Debt service charges for which the Sudan Government is liable by virtue of obligations incurred by it before the coming into force of this Constitution.

(*b*) The salaries payable to members of the Judiciary.

(*c*) The salaries payable to the members of the Public Service Commission.

(*d*) The salary payable to the Auditor-General.

(*e*) The salaries and allowances of the members of the Supreme Commission and other expenditure relating to its office.

(3) The Constituent Assembly may assent or refuse assent to any estimates included in the Appropriation Bill or may vote a lesser amount than that included therein but it may not vote an increased amount or an alteration in its destination.

(72) (1) The Council may present to the Constituent Assembly by means of an Advance Appropriation Bill estimates of the amounts required to provide for the maintenance of government services from the first day of the financial year until the Appropriation Bill receives the Supreme Commission's assent.

(2) Advance Appropriation Bills shall be dealt with in the same way as Appropriation Bills.

73. (1) The Council may present to the Constituent Assembly supplementary estimates of expenditure whenever:

(*a*) the amount voted by the Constituent Assembly proves insufficient for the purpose of the current year; or

(*b*) a need arises during the current year for expenditure, for which the vote of the Constituent Assembly is necessary, upon some new service not provided for in the budget for that year.

(2) Supplementary estimates shall be dealt with in the same way as estimates, save only that if the Constituent Assembly is not then sitting, the additional expenditure may in cases of urgency, be authorised by Provisional Order.

74. Whenever the Council proposes to make allocation from revenue to Government reserves, or to make a transfer from one reserve to another, it shall present to the Constituent Assembly a Bill to cover such allocation or transfer; and such Bill shall be dealt with in all respects as an Appropriation Bill, save only that if the Constituent Assembly is not then sitting such allocation or transfer may in cases of urgency be authorised by Provisional Order. Provided that it shall not be necessary for the Council to present a separate Bill to the Constituent Assembly under this Article for any allocation which has been included as expenditure in an Appropriation Bill or a Supplementary Appropriation Bill.

75. Whenever the Council proposes to expend moneys to be charged to Government reserves, it shall present at the Constituent Assembly a Bill to cover such expenditure, and such Bill shall be dealt with in all respects as an Appropriation Bill, save only that if the Constituent Assembly is not then sitting such expenditure may in cases of urgency, be authorised by Provisional Order.

76. Proposals for the imposition of new or the alteration or repeal of existing taxes shall be submitted to the vote of the Constituent Assembly by means of a Bill. Provided that the Council may, where in its opinion the public interest so requires, provide by Order in Council that any proposed new tax or alteration in or repeal of an existing tax shall come into operation on the day in which the Bill is presented to the Constituent Assembly but every such order shall be without prejudice, to the right of the Constituent Assembly to vote in due course on any such proposal. An order made under this Article may be revoked by the Council and, unless sooner revoked, shall expire upon the coming into operation of the Bill as an Act, or upon the rejection by the Constituent Assembly of the Bill; but its revocation or expiration shall not have retrospective effect, and no revenue collected under such order shall in any event be repayable. Provided further that if the Constituent Assembly is not then sitting, any new tax or alteration to or repeal of an existing tax may in cases of urgency, be authorised by Provisional Order.

77. (1) No member of the Constituent Assembly shall introduce any Bill or move any amendment to a Bill, having the object or effect of imposing or increasing any tax, or imposing any charge upon revenue, or upon the Government reserves, save with the prior consent of the Minister of Finance and Economics. Provided that a Bill or amendment shall not be deemed to have such object or effect by reason only that it includes provisions for the imposition of fines or penalties, or for the payment of fees for licences, or fees for services rendered.

(2) A certificate by the Minister of Finance and Economics that a proposed Bill has such object or effect shall be conclusive.

78. (1) The final accounts of the Government revenue and expenditure including expenditure charged to reserves, for each year shall be laid before the Constituent Assembly by the Council.

(2) The Auditor-General shall submit his report on the accounts to the Constituent Assembly at the same time as the accounts are laid before it, or as soon as practicable thereafter.

(3) If the accounts show that expenditure was incurred in excess of the appropriation made by the Constituent Assembly in respect of any head, the Council shall present to the Constituent Assembly a Bill to cover the excess, and such Bill shall be dealt with in all respects as an Appropriation Bill.

79. Subject to the provisions of this Constitution, all property and assets, which were vested in the Sudan Government immediately before the commencement of this Constitution, shall vest in that Government as constituted under this Constitution; and all rights, liabilities and obligations of the Sudan Government arising out of any contract or otherwise shall likewise be the rights, liabilities and obligations of that Government.

80. The executive power of the Sudan Government shall extend, subject to any law made by the Constituent Assembly to the grant, sale, disposition or mortage of any property held for the purposes of the said Government, and to the purchase or acquisition of property for those purposes, and to the making of contracts.

81. All contracts made in the exercise of the executive power of the Sudan Government shall be expressed to be made by the said Government, and shall be executed by such persons and in such manner as that Government may direct.

82. All suits and other legal proceedings instituted by or against any department or official of the Sudan Government relating to the performance of their official functions, shall be instituted in the name of the Sudan Government.

Chapter VIII

THE AUDITOR-GENERAL

83. There shall be an Auditor-General for the Republic of the Sudan, who shall be the servant of and directly responsible to the Constituent Assembly.

84. (1) The Auditor-General shall be appointed by the Supreme Commission on the recommendation of the Council and the approval of the Constituent Assembly.

(2) The Auditor-General shall, before assuming his office take an oath or make a declaration before the Supreme Commission in the form set out in the Schedule to this Constitution.

85. (1) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Sudan Government and every department or board thereof as may be laid down by the Constituent Assembly by law; and until provision in that behalf is so made, shall perform such duties and exercise such powers as were conferred on or were exercisable by the Auditor-General by or under the Audit Ordinance 1933 immediately before the coming into force of this Constitution.

(2) Any such law may confer on the Auditor-General similar duties and powers in relation to such other accounts as may be therein specified.

86. (1) The Auditor-General shall not be removed from his office except by an order of the Supreme Commission made in pursuance of a recommendation to that effect passed by a two-thirds majority of the members of the Constituent Assembly.

(2) On ceasing to hold office, an Auditor-General shall not be eligible for any employment under the Sudan Government.

87. The salary and pension rights of the Auditor-General shall be such as may be laid down by law, and in the meantime shall be those in force immediately before the commencement of this Constitution; provided that neither salary nor pension rights of the Auditor-General shall be varied to his disadvantage after his appointment.

88. The reports of the Auditor-General relating to the accounts specified in Article 85 of the Constitution shall be submitted to the Constituent Assembly.

Chapter IX [5]

THE JUDICIARY

89. (1) The administration of justice in the Republic of the Sudan shall be performed by a separate and independent department which shall be called " the Judiciary ".

(2) The Judiciary shall be directly and solely responsible to the Supreme Commission for the performance of its functions.

(3) The general administrative supervision and control of the Judiciary shall be vested in the Chief Justice.

90. The Judiciary shall consist of two divisions, the Civil division, and the Sharia division, of which the Chief Justice and the Grand Kadi shall be the respective Presidents and judicial heads.

91. The Civil division shall comprise the Courts and shall exercise the jurisdiction specified in the Civil Justice Ordinance, the Penal Code, the Code of Criminal Procedure, the Chief's Courts Ordinance, 1931 and the Native Courts Ordinance, 1932, or any amendment of the same, and such other Courts and jurisdiction as may from time to time be conferred upon it by law.

92. The Sharia division shall comprise the Courts, and shall exercise the jurisdiction, specified in the Sudan Mohammedan Law Courts Ordinance 1902, or any law amending or substituted for the same.

93. In the event of any conflict of jurisdiction arising between the Civil and the Sharia divisions, the same shall be referred for decision to a Court of Jurisdiction which shall consist of the Chief Justice as President, the Grand Kadi, two judges of the Civil High Court and one Judge of the Sharia High Court.

94. (1) The Chief Justice, the Grand Kadi, and members of the High Courts shall be appointed by the Supreme Commission after consultation with the appropriate President or retiring President.

(2) Members of subsidiary courts shall be appointed by the appropriate President.

(3) No appointment may be made which would effect an increase in the number of the Members of the Judiciary unless such increase is authorised by law.

95. The Chief Justice and members of the Civil High Court shall on appointment take an oath or make a declaration before the Supreme Commission in the form set out in the Schedule to this Constitution. Members of subsidiary civil courts shall take the said oath or make the said declaration before the Chief Justice.

96. (1) The Chief Justice, the Grand Kadi, and members of the High Courts shall hold office until they attain the age of 55 years, or such later age in any particular case as the Supreme Commission may approve. Provided that they may at any time resign office by notice in writing addressed to the Supreme Commission; and shall not be removed from office except by the Supreme Commission in pursuance of a recommendation to that effect, either made by the appropriate President and all other members of that High Court (except the member in question), or carried by a three-quarters majority of the members of the Constituent Assembly.

(2) Members of the subsidiary courts shall hold office until they attain the age of 55 years provided that they may at any time resign office by notice in writing addressed to the appropriate president, and may be removed from office by the appropriate president with the consent of the Supreme Commission.

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[5] See the *National Charter* as to the formation of a Court of Appeal in which shall vest the judicial and administrative powers of the Chief Justice.

97. The Chief Justice may delegate to the Grand Kadi or to a member or members of the Civil High Court or the Chief Registrar of the Judiciary such of the powers vested in him as administrative head of the Judiciary as he may think fit; and may delegate to a member or members of the Civil High Court or the Chief Registrar of the Judiciary such of the powers vested in him as judicial head of the Judiciary as he may think fit except his powers under Article 93 of this Constitution.

98. (1) The salaries and pension rights of members of the Judiciary shall be such as may be laid down by law, and in the meantime shall be those in force immediately before the commencement of this Constitution; provided that neither salary nor pension rights of a member of the Judiciary shall be varied to his disadvantage after his appointment.

(2) Subject to the provisions of this Constitution, the conditions of service of members of the Judiciary, including provisions as to recruitment, appointment, promotion, transfer, retirement, discipline and pension shall be such as may be laid down by regulations made by the Chief Justice, in consultation with the Grand Kadi so far as concerns the Sharia division, and with the consent of the Supreme Commission, and in the meantime shall be those in force immediately before the commencement of this Constitution and applicable to all Government servants, but subject to any amendment which may be made therein.

(3) The said regulations may provide for the creation of a Judicial Service Board, of which the Chief Justice shall be President, and the Grand Kadi a member *ex officio,* and for the delegation thereto of such powers and functions in respect of any of the matters mentioned in the preceding sub-Article as may be thought appropriate.

99. (1) The Judiciary shall be the custodian of the Constitution, and shall have jurisdiction to hear and determine any matter involving the interpretation of the Constitution hereby established, or the enforcement of the rights and freedoms conferred by Chapter II.

(2) The jurisdiction with regard to the interpretation of the Constitution shall be exercised by the Civil High Court.

Chapter X

PUBLIC SERVICE COMMISSION

100. (1) There shall be a Public Service Commission (in this Chapter referred to as "the Commission"), the chairman and other members whereof shall be appointed by the Supreme Commission after consultation with the Council.

(2) The Supreme Commission may make regulations determining the number of members of the Commission, their tenure of office, and their remuneration, and making provision for the Commission's staff.

101. The Commission shall be consulted by the Council or the Minister concerned, and shall make recommendations to the Council or Minister in respect of the principles to be observed in the following matters in regard to the public service:

(*a*) recruitment, appointment promotion, transfer and retirement;

(*b*) the holding of examination for entry into service or promotion;

(*c*) the enforcement of discipline.

Provided that the Supreme Commission may by order specify the matters (not being matters of major importance) on which either generally, or in any particular class of case, or in any particular circumstances, it shall not be necessary for the Commission to be consulted.

102. The Council or the Minister concerned shall submit the following matters to the Commission which may make recommendations to the Council or the Minister concerned:

(*a*) Proposals for regulations affecting the salaries or conditions of service of Government servants.

(*b*) Proposals for the creation of new posts to which super-scale salaries are to be allotted.

(*c*) Proposals for the promotion of Government servants to posts to which super-scale salaries are allotted.

Provided that the Supreme Commission may by order specify the matters (not being matters of major importance) which either generally, or in any particular class of case, or in any particular circumstances, it shall not be necessary for the Council or the Minister concerned to submit to the Commission.

103. The Supreme Commission on the advice of the Council may by order confer upon the Commission such additional functions, of a like nature to those hereby specified, in respect of the public service as it may from time to time think fit.

104. In order to enable the Commission to perform its functions and exercise its powers hereunder, the Supreme Commission may make regulations:

(*a*) authorising the Commission to require the production before it of any Government documents or records, and to require any person to appear before the Commission to give evidence on any matter which is under consideration or investigation by the Commission;

(*b*) providing for all other necessary subsidiary matters, including the prescribing of offences and the imposition of penalties in respect of any of the matters mentioned in the preceding paragraph.

105. Save as law otherwise provided the Commission shall exercise and perform:

(*a*) the powers and duties vested in the Central Board of Discipline under the Officials Discipline Ordinance, 1927;

(*b*) The powers and duties vested in all or any of the Councils constituted under the several Sudan Government Pensions and Provident Fund Ordinances.

106. (1) Any Government servant, aggrieved by any decision made against him, may submit a petition to the Commission.

(2) Upon receiving such petition the Commission shall consider the same, and, while doing so, may ask for any information from any department of Government, and the same shall be supplied to it.

(3) The advice of the Commission regarding such petition shall be communicated to the Minister concerned, and if the petition was made against a Minister's decision, the advice shall be communicated to the Council.

(4) In any case where the Council does not accept the advice of the Commission, the Council shall forthwith report the fact to the Supreme Commission giving the reasons for such non-acceptance and the decision thereon of the Supreme Commission shall be given effect to.

107. The Commission shall submit to the Supreme Commission an annual report on its work, and the Supreme Commission shall cause a copy of the report to be laid before the Constituent Assembly. [6]

Chapter XI

EXEMPTION FROM RESPONSIBILITY FOR PREVIOUS ACTS

108. Any judgment, order or act made by any person or body of persons in the period from 17th November, 1958 to the coming into force of this Constitution shall not be assailed nor shall any legal proceedings be taken with respect thereof nor based thereon before any criminal, civil or administrative court in so far as that judgment order or act has been made by that person or body of persons in the performance of his or its duty or for preserving law and order or public security in accordance with any order of the Armed Forces in any form whether military or civil.

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[6] By the removal of Ferik Ibrahim Abboud the powers in Chapters VIII, IX and X previously conferred on the Head of State have been transferred to the Supreme Commission and therefore the following Article appearing at the end of Chapter X has been deleted:

(Immediate Transfer of Powers to Supreme Commission)

All powers conferred on the Head of State by virtue of the preceding Chapters VIII, IX and X shall be exercised by the Supreme Commission after expiry of the Transitional Period.

Chapter XII

TRANSITIONAL PROVISIONS

109. Subject to the provisions of this Constitution, all the laws in force in the Republic of the Sudan immediately before the commencement of this Constitution shall continue in force until altered, replaced or amended by other competent authority.

Explanation I

The expression "law in force" in this Article includes a law which may not have been brought into operation either at all or in any particular area.

Explanation II

Nothing in this Article shall be construed as continuing any law beyond the date, if any, fixed therein for its expiry.

110. (1) All members of the Judiciary holding office immediately before the commencement of this Constitution shall, subject to the provisions of this Constitution, continue in office, and all regulations made by the Chief Justice shall continue in force as if made under this Constitution.

(2) All powers vesting in the Chief Justice immediately before the commencement of this Constitution shall continue to vest in him, subject to other provisions made by law, in this behalf.

111. The members of the Public Service Commission holding office immediately before the commencement of this Constitution shall continue to hold office under this Constitution, and all regulations made relating to them, and all matters pending before them shall continue as if such regulations were made under this Constitution, and such matters were dealt with by them in accordance with the provisions of this Constitution.

112. All Courts and other Authorities, and all Officers, executive and ministerial, of the Government of the Sudan existing or holding office immediately before the commencement of this Constitution, shall continue to exercise their respective functions subject to the provisions of this Constitution.

113. The Auditor-General holding office immediately before the commencement of this Constitution shall continue in office in accordance with this Constitution subject to his taking an oath or making a declaration as set forth in the Schedule to this Constitution.

114. For the interpretation of this Constitution, unless the context otherwise requires, the following words and expressions shall have the meanings hereby respectively assigned to them:

"Chief Justice" includes a person appointed to act as Chief Justice.

"The Council" means the Council of Ministers.

"Grand Kadi" includes a person appointed to act as Grand Kadi.

"Law" means any Ordinance, Act or Provisional Order made by a competent authority, and includes any order, by-law, rule, regulation, notification having the force of law within the Republic of the Sudan or any part thereof.

"Member of the Judiciary" means any of the following persons namely: Chief Justice, Grand Kadi, Mufti, members of the High Courts, Province Judges, District Judges, Kadis, Resident Magistrates, Police Magistrates, Legal Assistants and the Chief Registrar of the Judiciary.

"Members of Subsidiary Courts" means members of the Judiciary inferior to members of the High Courts.

"Money Bill" means any Bill making any provision for expenditure to be charged to or an allocation to be made from revenue, of Government reserves, any Bill imposing, altering or repealing any tax, and any Bill authorising the raising of loans or the issue of bonds.

"Pensions" includes gratuities and other post-service benefits.

"Tax" means any tax, whether general, local or special and includes royalties, import, export, consumption and excise duties.

"Transitional Period" means the period ending by the formation of the Constituent Assembly or the end of March, 1965, whichever is the earliest. [7]

[7] See Resolution of the Council of Ministers, No. 205 dated 2nd February 1965 which reads as follows:

"Council of Ministers has passed the Constituent Assembly (Distribution of Territorial Constituencies) Order 1965 on the condition that elections shall be held in all parts of the country at one time not later than 21st April 1965. If it appears to the Council of Ministers that this is impossible the Council shall announce this fact and apply for extension or termination of its authority."

THE CONSTITUENT ASSEMBLY ELECTIONS ACT, 1965

Act No. 3 of 1965 [8]

AN ACT to provide for the conduct of elections to the Constituent Assembly and for all other matters connected therewith.

In accordance with the provisions of Article 40 of the Transitional Constitution, 1964, the Council of Ministers has made the following Act and the Supreme Council of State has consented thereto:

1. This Act may be cited as "The Constituent Assembly Elections Act, 1965".

2. In this Act, unless the context otherwise requires the following words and phrases shall have the meanings herein respectively assigned to them:

"Election Commission" means the election commission appointed under Article 44 of the Transitional Constitution, 1964.

"Person" means a natural person.

"Prescribed" means prescribed by rules made under this Act.

"Ordinarily resident in a constituency" means a person who ordinarily resides in that constituency, or who is the owner or lessee of a dwelling house therein.

"Graduate" means any person who:

(i) has completed his study in a recognized secondary school; or
(ii) has obtained a diploma or degree from a recognized university or university-college; or
(iii) has successfully passed the Cambridge Certificate Examination or any higher or equivalent examination; or
(iv) has obtained the certificate of Aalimya from the Religious Institute (or Islamic College); or
(v) has completed his study in the sections of teachers or judges in the old Gordon Memorial College.

3. (1) The Election Commission shall have the power to appoint such officers and other staff as may be necessary for the discharge of its functions.

[8] *Special Legislative Supplement to the Republic of the Sudan Gazette*, No. 1004, of 14 February 1965, Supplement No. 1: General Legislation.

(2) The conditions of service of such officers and other staff shall be such as may be approved by the Minister of Finance.

(3) The Council of Ministers shall, when so requested by the Election Commission, make available to the Commission such staff as may be necessary for the discharge of its functions.

4. There shall be for the Assembly elections territorial constituencies and graduate constituencies.

(1) As to territorial constituencies:

(*a*) Distribution thereof in all the country shall be by an equal numerical ratio so that the number of population in any one constituency shall not be less than 50,000 nor more than 70,000 persons according to the last general census,

(*b*) the Council of Ministers shall, by an Order to be published not later than 30 days before the date fixed for nomination of candidates, specify the name and boundaries of each such constituency.

(2) As to the graduate constituencies there shall be allotted for graduates fifteen constituencies.

5. (1) A person shall be qualified to vote in a territorial constituency if he:

(i) is a Sudanese, and

(ii) is not less than 18 years or age, and

(iii) is of sound mind,

(iv) has been ordinarily resident in the constituency for a period of not less than six months immediately before the closing of the electoral roll.

(2) A person shall be qualified to vote in graduate constituencies if he:

(i) is a graduate within the definition set out in section 2 of this Act; and

(ii) secured the qualifications mentioned in paragraphs (i), (ii) and (iii) of sub-section (1) of this section.

6. (1) Whenever a general election is to be held the Election Commission shall by an Order to be published in the Gazette, fix a date on or before which nominations of candidates for election shall be filed.

(2) Any casual vacancy in the Constituent Assembly shall be reported by the Speaker to the Election Commission which shall call upon the territorial or graduate constituencies as the case may be by a notification in the Gazette to elect a person to fill the vacancy and take steps for holding a by-election for the constituency or constituencies concerned as early as may be practicable.

7. The elections to the Constituent Assembly shall be direct.

8. (1) There shall be for each territorial constituency or for the graduate constituencies an electoral roll which shall be prepared in accordance with rules to be made in this behalf by the Election Commission.

(2) No person shall be entitled to be registered in an electoral roll unless he is a qualified voter under section 5 of this Act.

(3) No person shall be entitled to be registered in an electoral roll for more than one territorial constituency nor shall he be entitled to be registered more than once in any territorial or graduate constituencies.

(4) Electoral rolls shall be open to inspection by members of the public at such times and subject to such conditions as may be prescribed by the Election Commission.

(5) Any person entitled to be registered in an electoral roll and who has not been so registered, may apply to have his name included in such roll.

(6) Any person whose name appears in an electoral roll for any constituency may object to the inclusion in that roll of the name of any other persons.

(7) The electoral roll shall be published as soon as practicable after the closing date.

(8) The validity of an electoral roll shall not be questioned by reason merely of the failure to include therein the names of any person or persons qualified for such inclusion or of the inclusion therein of the names of any person or persons who are not qualified for such inclusion.

9. (1) Any person who is qualified to be elected as a member of the Constituent Assembly for a territorial or graduate constituency and who is willing to stand may be nominated for that constituency.

(2) No person other than a Graduate shall be nominated for a graduate constituency.

(3) The Election Commission shall prescribe the procedure for the filing, scrutiny, acceptance, rejection and publication of nominations.

10. (1) Any person nominated as a candidate for any constituency, shall deposit or cause to be deposited a sum of LS 20 in a Government treasury, and no nomination shall be accepted unless such deposit has been made.

(2) Such deposit shall be returned to the candidate:

(*a*) if his nomination is rejected;

(*b*) if he withdraws from his candidature before the publication of the notice of the polling day;

(*c*) in the case of a successful candidate, after he has taken the oath of office as a member of the Constituent Assembly;

(*d*) in the case of an unsuccessful candidate, only if he has obtained not less than ten per cent of the valid votes cast.

11. (1) An appeal shall lie to such District Judge of the First or Second Grade, as may be designated by the Chief Justice against any order:

(*a*) refusing to include the name of the appellant in the electoral roll;

(*b*) deleting the name of the appellant from the electoral roll;

(*c*) rejecting an objection against an entry in the electoral roll;

(*d*) rejecting the nomination of the appellant as a candidate;

(*e*) accepting the nomination of a candidate.

(2) An appeal under clauses (*a*) or (*b*) or (*c*), shall be filed not later than seven days after the publication of the electoral roll, and an appeal under clauses (*d*) or (*e*) shall be filed not later than three days after the publication of the list of valid nominations.

(3) The Chief Justice shall make rules for the hearing and disposal of such appeals, and may in addition, prescribe the amount of court fees to be paid in respect of such appeals.

(4) In addition to the Judges referred to in sub-section (1), the Chief Justice shall be competent to appoint any other person, who in his opinion is suitable for the purpose of hearing appeals under this section, and may determine the remuneration to be paid to him, if the person so appointed is a non official.

12. No election shall be held in a constituency, unless all applications and objections made under sub-sections (5) and (6) of section 8, and all appeals under sub-section (1) of section 11 have been disposed of.

13. Election of members to the Constituent Assembly shall be as follows:

(1) As to elections in the territorial constituencies;

(*a*) If there are more than one valid nomination for any constituency, elections shall be held in accordance with this Act and with any rules made thereunder.

(*b*) If there is only one valid nomination in any constituency, the person so nominated shall be declared to have been elected.

(*c*) On completion of the counting of votes in any constituency, a declaration showing the number of votes polled for each candidate shall be issued and the candidate who has polled the largest number of votes shall be declared to have been elected for the said constituency.

(*d*) If, after the counting of votes is completed, an equality of votes is found to exist between the candidates for any constituency, a fresh election shall be held for that constituency.

(2) As to elections in graduate constituencies:

(*a*) Every graduate is entitled to elect fifteen of the persons nominated in graduate constituencies in addition to his right of election in the territorial constituencies.

(*b*) The votes polled for each candidate shall be counted and the candidates arranged according to the number of votes polled for them so that the candidate who secured the largest number of votes shall be written at the top of the list and then the first fifteen candidates including that candidate shall be declared to have been elected.

(*c*) If the same number of votes is polled for two or more candidates:

(i) if those candidates can be included in the first fifteen candidates on the list then all shall be declared elected,

(ii) if those candidates cannot be included in the first fifteen candidates on the list then a by-election shall be held for the filling of those vacancies.

14. The validity of the constitution of the Constituent Assembly or of any proceeding therein shall not be affected by the mere fact of unfilled vacancies therein.

15. (1) Voting in territorial constituencies shall be secret, and votes shall be cast by means of a ballot paper or a voting token issued direct to the voter in the polling station. Such ballot paper or voting token shall not be signed, or in any other manner marked so as to identify the voter.

(2) A voter in a territorial constituency shall cast his vote in person: Provided that, subject to such conditions as may be prescribed, this requirement may be waived in the case of a voter present at the polling station and who by reason of blindness or other incapacity is unable to mark his ballot paper or cast his token.

(3) Voting in graduate constituencies may be in such manner as may be prescribed by the Election Commission.

16. (1) Every employer shall, on the polling day, allow to every voter in his employ a reasonable period of absence for voting, and no employer shall make any deductions from the pay or other remuneration of any such voter or impose upon or exact from him any penalty by reason of his absence during such period.

(2) An employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any voter in his employ of a reasonable period of absence for voting, as in this section provided, shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period which may extend to three months or to a fine not exceeding LS 50 or both.

17. No person shall, during any legal proceedings or otherwise, be required to disclose the name of the person for whom he voted at an election held under this Act.

18. (1) Every officer and every other person, who is required to perform any duty in connection with any election in accordance with the provisions of this Act, or of any rules made

thereunder or of any general or special directions issued by the Election Commission, shall be bound to perform such duty fairly and in the manner required by such provisions.

(2) If the Commission is satisfied that any such officer or other person has intentionally failed to perform any such duty, or has performed it in a grossly negligent manner, it may order disciplinary action to be taken against the said officer or other person, and for this purpose, the Chairman of the Election Commission shall have and may exercise all the powers conferred upon a Head of Department, under the provisions of the Officials Discipline Ordinance, 1927.

19. (1) The Election Commission may make rules for the purpose of performing its functions under the Transitional Constitution, and for carrying out the provisions and purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for any of the following matters, namely:

(*a*) the powers and duties of Election Officers, including the taking of oath of office;

(*b*) the preparation, publication and maintenance of electoral rolls;

(*c*) the manner in which and the time within which claims and objections as to entries in electoral rolls, may be preferred and disposed of;

(*d*) the nomination of candidates and withdrawal of candidature;

(*e*) the appointment and functions of election agents;

(*f*) the date or dates for polling in the constituencies, and the determination of polling stations;

(*g*) the prescribing of returns, notices and other forms to be used in connection with elections;

(*h*) the manner of voting, and the counting of ballot papers of voting tokens;

(*i*) the maintenance of orderly conduct, and the freedom of voting at or near polling stations;

(*j*) the requisitioning of vehicles for hire on reasonable compensation;

(*k*) any other matter which in the opinion of the Election Commission, requires to be regulated by rules.

(3) The Election Commission may, at any time, direct that the provisions of any rule shall not apply to any constituency or shall apply in a modified form. When such direction has been given, the rule concerned shall be deemed to have been cancelled or modified accordingly in so far as an election in that constituency is concerned.

THE POLITICAL SEGREGATION ACT, 1965

Provisional Order No. 17 of 1965 [9]

1. Upon being confirmed by resolution of the Constituent Assembly this Provisional Order may be cited as "The Political Segregation Act, 1965" and shall be deemed to have come into force from date of signature by the Supreme Commission.

2. "Segregation" means disqualification from the enjoyment of the rights named in section 4 of this Act.

3. The provisions of this Act shall apply to every person who:

(*a*) had been a member of the Supreme Council or a Minister for any time during the period 17.11.58 to 26.10.64;

(*b*) is convicted under the Unlawful Enrichment Act 1964;

(*c*) is convicted of any crime in relation to 17.11.1958 coup.

4. The Council of Ministers may in relation to a person to whom the provisions of section 3 of this Act apply make a segregation order to be published in the official Gazette, whereupon the following consequences will follow:

(1) Suspension for a period of not less than 5 years from the date of the order of the following rights:

(*a*) the right to vote in general or local elections, to stand as a candidate for or be a member of the Constituent Assembly, Parliament and Provincial and Local Councils;

(*b*) the right to hold office in government or semi-government units;

(*c*) the right to be a member of a political party;

(*d*) the right to be a member of Boards of Directors of any bodies, corporation or institution which are subject to government control.

(2) Disqualification for life from the following rights:

(*a*) the right to bear honorary decoration and medals;

(*b*) the right to possess fire-arms;

(*c*) the right to be a member in the Armed Forces.

5. Segregation under this Act shall be in addition to and not in derogation of any penal or disciplinary punishment inflicted under any other law.

[9] *Ibid.*, No. 1008, of 30 May 1965.

THE CIVIL SERVANTS CONDUCT (AMENDMENT) RULES, 1965 [10]

...

2. The Civil Servants Conduct Rules, 1958 are hereby amended as follows:

Sub-rule (1) of Rule 4 is deleted and the following substituted therefor:

"4. (1) No official shall be an active member of any political party or any other organization which takes part in politics nor shall he take an effective part in any political party activity."

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[10] *Ibid.*, No. 1012, of 15 August 1965.

SWEDEN

LEGISLATION RELATING TO HUMAN RIGHTS [1]

I

By an Act dated 3 December 1965, which came into force on 1 January 1966, the regulations on conditional release in Chapter 26 of the Penal Code have been changed with a view to promoting greater uniformity within the legislation of the Nordic countries.

According to the previous legislation, mandatory conditional release could take place when the sentenced person had served two-thirds of the term of imprisonment, however not less than four months. Furthermore there was a compulsory form of conditional release to the effect that a person serving a sentence of a fixed period, not less than six months, should conditionally be released after having served five-sixths of the period.

By the new legislation these rules have been abolished, and possibilities now exist for conditional release when one-half of the term of imprisonment has been served. Furthermore, it is stipulated that the length of the parole period shall no longer be prescribed by law but shall be decided in each case under certain fixed terms.

II

During 1965 Sweden has ratified a European code on social security drawn up by the Council of Europe and a protocol attached thereto.

III

On 1 July 1965, a new Act on boarding houses for certain handicapped children came into force. In this Act there are stipulations laid down covering the obligation of the local authorities concerned to provide for the board-and-lodging accommodation in special boarding houses of physically handicapped children, who due to their handicap or for other particular reasons are in need of board-and-lodging accommodation in order to attend primary schools. According to this Act it is also mandatory to provide for the board-and-lodging accommodation in boarding houses of handicapped children under school age, if this is necessary in order to give them such pre-school education and treatment as may be essential owing to their handicap.

IV

An increase in the national basic pensions took place on 1 July 1965. The annual pension —apart from municipal rent allowances—is as from July 1965 Sw.Kr. 4,000 for a single pensioner or a total of Sw.Kr. 6,250 for two spouses entitled to a pension.

On 1 July 1965, the annual government child allowance was increased from Sw.Kr. 700 to Sw.Kr. 900 per child.

V

On 1 July, an Act dated 9 April 1965, on police records etc., came into force. Previously the recording carried out by the police authorities of crimes and reports on conduct was not covered by law. The object of the new Act is on the one hand to meet the general requirements of legal security that the police records be compiled in such a way as to make them effective instruments especially as regards the combating of crimes, and on the other to safeguard the interest of the individual so as to ensure that reports on his conduct are not compiled beyond the extent deemed necessary to meet the requirements of public authorities.

Strict regulations have been laid down for the use of the police records.

[1] Note furnished by the Government of Sweden.

SYRIA

LABOUR INSPECTION REGULATIONS

Published by the Minister of Social Affairs and Labour by Order No. 465 of 4 July 1965 [1]

Chapter I

LABOUR INSPECTION

1. The inspection of labour shall be carried out by the competent officials of the Ministry of Social Affairs and Labour (labour inspectors), with the object of ensuring that workers are protected in the course of their employment and that the provisions of the Labour Code and other labour laws administered by the Ministry are applied.

2. A labour inspector, when carrying out his duties in accordance with instructions, shall have the same status as a law enforcement officer attached to the courts.

A labour inspector's report of an offence shall be transmitted to the competent court.

...

Chapter II

OBLIGATIONS OF LABOUR INSPECTORS

5. (*a*) A labour inspector shall supervise the enforcement of the provisions of the Labour Code [2] and other labour legislation and shall ensure that such provisions, and especially those relating to conditions of work, are properly applied.

(*b*) A labour inspector shall visit workplaces in accordance with instructions, with the object of carrying out the inspection of labour.

(*c*) A labour inspector shall treat the source of any complaint he has received as absolutely confidential and shall give no intimation to the employer or his representative that a visit of inspection has been made in consequence of a complaint.

6. On the occasion of a visit of inspection an inspector shall notify the employer or his representative of his presence, unless he considers that such a notification may be prejudicial to effective supervision.

7. (*a*) Labour inspectors and their superiors shall supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions.

(*b*) They shall co-operate with employers and workers or their organisations in ensuring compliance with the legal provisions.

Chapter III

POWERS OF LABOUR INSPECTORS

8. A labour inspector shall have power to enter freely and without previous notice at any hour of the day or night any establishment liable to inspection.

9. A labour inspector shall have power to interrogate, either alone or in the presence of witnesses, the employer of the staff of the undertaking on any matters concerning the application of the legal provisions.

10. A labour inspector shall have power to require the production of any books, registers and documents the keeping of which is prescribed by law, in order to see that they are in conformity with the legal provisions, and to copy them or make extracts from them.

11. Every employer and his agents or representatives shall facilitate the task of the labour inspectors and shall provide them with true and accurate information for the purpose.

12. The administrative authorities shall effectively assist the labour inspectors in the discharge of their duties.

13. A labour inspector shall prepare a report on each of his visits of inspection, mentioning the measures he has taken, and shall submit it to his immediate superior for decision.

...

15. A labour inspector's report of an offence shall be transmitted to the competent court by the senior official of the service, section or directorate, as the case may be. The competent regional directorate shall follow the action taken on the report and inform the Ministry accordingly.

16. The inspection of labour may be carried

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[1] *Al-jarida al-rasmiya*, No. 38, of 19 August 1965. Translations of the Regulations into English and French have been published by the International Labour Office as *Legislative Series* 1965 — Syr. 1.

[2] See International Labour Office: *Legislative Series* 1959—U.A.R. 1, 1960—U.A.R. 2.

out by day both during and outside official working hours, and by night in accordance with the written instructions or mission orders given to inspectors by their superiors.

17. A labour inspector may carry out his duties even in the absence of the employer or his representative; he shall have power to summon the employer or his representative to his office for the purpose of obtaining an explanation of any offence that has occurred and of taking the necessary measures.

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THAILAND

NOTE [1]

I. LEGISLATION

University of Fine Arts Act (No. 3), B.E. (1965).

This Act is an amendment to the University of Fine Arts Act, B.E. 2486 (1943), bringing that Act in line with other acts on universities. Its purpose is to modify the power and function of the University Council, and to substitute the Rector for the Director-General of the Department of Fine Arts, who is *ex officio* the University's Director and is responsible for the works of the University. This Act provides that the University is to be under the supervisory control of the University Council, which is composed of *ex officio* members (the Prime Minister, the Secretary-General of the National Education Council, the Rector, the Deans and the Secretary-General of the University of Fine Arts) and not more than 5 other qualified members appointed by Royal Command (Section 3). The Prime Minister is the President of the University Council, while the Rector is the Vice-President. The functions of the University Council are set out in section 5 as follows:

(1) To set down University rules and regulations;

(2) To determine curricula for the approval of the National Education Council;

(3) To find methods for the promotion of education and research of the University;

(4) To confer degrees and junior degrees;

(5) To propose the establishment, merger and dissolution of colleges, faculties and branches of study for the approval of the National Education Council;

(6) To propose the appointment, merger and dissolution of colleges, faculties and branches of study for the approval of the National Education Council; and

(7) To control University finance and property.

Act Determining the Retirement Age of Those Working in Government Organizations, B.E. 2508 (1965).

This Act provides for those working in the Government organizations to be retired from service at the age of sixty. However, the said maximum limit of age may be extended year by year with the consent of the Cabinet, but not exceeding the completion of sixty-five years of age. It has been enacted with a view to regulating the retirement age so that it be on the same level for and applicable to all officials working in the government organizations.

Nationality Act, B.E. 2508 (1965).

This Act repeals the Nationality Act, B.E. 2495 and its subsequent amendments. Under the new Act, persons acquiring Thai nationality by birth are those born of fathers of Thai nationality whether within or outside the Thai Kingdom; those born of mothers of Thai nationality outside the Thai Kingdom but whose fathers are unknown or have no nationality; and those born within the Thai Kingdom (Section 7). Children of a head of a diplomatic mission or a consular mission, or of a staff member or an officer or expert of an international organization and children of a member of a family of the aforementioned people, born in the Thai Kingdom, do not acquire Thai nationality (Section 8). An alien woman who marries a Thai national may acquire Thai nationality (Section 9). Also a Thai woman is entitled to renounce her Thai nationality for the nationality of her alien husband if, according to the law on nationality of her husband, she may do so (Section 14). An alien who possesses the qualifications and fulfils the requirements prescribed by law may apply for naturalization as a Thai (Section 10). With respect to an alien woman who acquires Thai nationality by marriage, her Thai nationality may be revoked if the marriage was effected by concealing facts or by making any statement false in material or by committing any act prejudicial to the security of the State or contrary to the public order or good morals (Section 16). The Minister of the Interior is empowered, with respect to a Thai national born of an alien parent within the Thai Kingdom or a naturalized Thai national, to revoke his Thai nationality where there exist circumstances suitable for maintaining the security or interests of the State (Sections 18 and 19). A Thai national born of an alien father within the Thai Kingdom shall lose his Thai nationality if he obtains an alien identification card according to the law on registration of aliens (Section 21). Any Thai national, who has been naturalized as an alien or who has renounced Thai

[1] Note furnished by the Government of Thailand.

nationality or whose Thai nationality has been revoked, shall lose his Thai nationality (Section 22). The acquisition or loss of Thai nationality shall have effect personally (Section 5).

Lawyer Act, B.E. 2508 (1965).

The purpose of this Act is to bring up to date the law on lawyers. It repeals and replaces the three earlier Lawyer Acts. It gives the Bar Association of Thailand jurisdiction over the registration and licensing of lawyers as well as disciplinary powers over their professional conduct. It also provides a simple and speedy procedure for persons who want to make a complaint as to the conduct of a lawyer.

Registered and licensed lawyers are divided into two classes, First Class and Second Class lawyers (Section 4). A First Class lawyer is an ordinary member of the Bar Association who has the right of audience as an advocate before all courts throughout the Kingdom. A Second Class lawyer is an extraordinary or associate member of the Bar Association holding a qualification in law recognized by the Association and having the right of audience as an advocate only before the Court in the province where his registered office is situated and four other courts as specified in his licence.

Where a complaint has been made to the Bar Association by an injured party, or where there are circumstances requiring an investigation as to the conduct of any lawyer, the President of the Bar Association shall appoint an Investigation Committee composed of not less than three ordinary members of the Bar Association to investigate the complaint or circumstances (Section 24). The Committee will submit its finding and opinion to the President of the Bar Association who may then refer the case to the Director-General of the Public Prosecution Department, dismiss the case or ask for further investigation (Section 26). Where the case is referred to the Director-General of the Public Prosecution Department, he may refer the charge to the Disciplinary Committee, which is composed of not less than nine members elected by the Bar Association, for its determination. In determining such a charge, the Civil Procedure Code shall apply, *mutatis mutandis* (Section 29). The said Committee may dismiss the charge, in which case its decision is final or be of the opinion that the accused lawyer has misconducted himself, in which case it shall notify the Bar Association of the same. The Bar Association, thereupon, shall decide whether to dismiss the charge, reprimand the accused lawyer, suspend him for a duration not longer than three years, or strike his name off the register (Section 31). The Bar Association is also empowered, upon the notice of the Court of First Instance that a lawyer has been punished with imprisonment by a final judgement for an offence other than that committed through negligence or being a petty offence, to strike such lawyer off the register (Section 32). The lawyer so struck off the register may, after a lapse of five years, apply to be re-registered and re-licensed if he still holds the necessary qualification therefor. A person not having been registered and licensed or having been struck off the register or suspended or whose licence having expired, and who practises, shall be punished with a fine not exceeding one thousand baht (Sections 36 and 37).

Act on Architectural Profession, B.E. 2508 (1965).

This Act is designed to organize and control the architectural profession. The organization and administration of the profession are done by the "Architecture Control Commission", composed of the Under-Secretary of State for the Interior as Chairman, 5 qualified architects from public bodies engaged in the architectural profession, 4 qualified architects from educational institutes instructing architecture at bachelor's degree level and 6 qualified architects other than those aforementioned as members appointed by the Minister of the Interior, totalling 15 in number (Section 7). The power and function of the Commission are to issue, suspend and revoke architectural licences; to lay down regulations for the application for issuance, renewal, suspension and revocation of licences, as well as to recommend and give advice to universities and educational institutes with respect to the instruction of architecture in its various branches (Section 13). A person applying for a licence to practise as an architect must be at least twenty years of age, must not be of bad conduct or of moral defect, nor have been sentenced to imprisonment for dishonouring the profession (Section 18). He must also possess the knowledge and experience required by the law (Section 19). A person practising architecture for profit without a licence shall be liable to a term of imprisonment not exceeding one year or a fine not exceeding ten thousand baht, or both (Section 29). Every architect must abide by the professional ethics as prescribed in the Ministerial Regulations (Section 26).

Settlement of Labour Disputes Act, B.E. 2508 (1965).

This Act repeals Announcement No. 19 of the Revolutionary Party, dated 31 October B.E. 2501 (1958). It has been put into operation with the purpose of determining the methods which are to be used by employers and employees in making a wilful settlement of labour disputes, and of determining measures for the settlement of labour disputes so as to be suitable to the present circumstances in Thailand. Under this Act, any employer or employee who wishes to amend or change any agreement or practice concerning conditions of employment shall submit his claim in writing to the other party with a view to reaching an agreement (Section 5). The representative of the employer or the employee in negotiating a settlement must be any employee who has jointly submitted the claim, any representative of the employer being a juristic person or any employer who has submitted the claim jointly with other employers (Sections 6 and 8). The employer or employees submitting the claim shall, after having been informed of the appointment of the other party's representative, request the Conciliation Officer to arrange for the representatives of both parties to negotiate a settle-

ment. The Conciliation Officer shall, not later than three days as from the receipt of the request, notify the representatives of both parties of the date, time and place for negotiating a settlement (Section 10). If the party, having received the claim, does not turn up for negotiation at the specified place and time, the labour dispute shall be considered unsettled (Section 11). In case the party submitting the claim fails to negotiate a settlement arranged by the Conciliation Officer, no claim shall be considered to have been submitted (Section 12). If both parties fail to reach an agreement in conciliation arranged by the Conciliation Officer within thirty days from the beginning day of the conciliation, the labour dispute shall be considered unsettled unless any or both parties request the Conciliation Officer that both parties agree to appoint an arbitrator to make an award concerning the dispute (Section 15). If no award has been made within 30 days from the date of appointment of the arbitrator, the labour dispute shall be considered unsettled (Section 18). The parties to the labour dispute must comply with the award made by the arbitrator (Section 18). The award made by the arbitrator must not require the parties to comply or not to comply with any practices other than those included in the claim (Section 20). After the claim has been submitted by the employees and while steps for seeking a settlement of a labour dispute are being made under this Act, the employer is prohibited to withhold employment or dismiss the employees who have jointly submitted the claim unless they are absent from work without reasonable excuse or wilfully disobey the lawful order of the employer, violation of which is liable to a term of imprisonment not exceeding one month or a fine not exceeding three thousand baht (Sections 21 and 25). Any employee who calls a strike or any employer who orders a lock-out without submitting a claim to the other party, before the labour dispute becoming unsettled or without any failure or non-compliance with the award on the part of the party having received the claim, shall be liable to a term of imprisonment not exceeding three months or a fine not exceeding one thousand baht (Section 22). The strike or lock-out is not allowed in the works of public utility, such as railway organization, port authority, telegraph and telephone organization etc., and in government public bodies, violation of which is liable to a term of imprisonment not exceeding six months or a fine not exceeding two thousand baht (Sections 23 and 26). In case martial law or a state of emergency is declared in any area, a strike or lock-out in the whole or only part of such area may be prohibited by the Minister of the Interior in a notification published in the *Government Gazette*. Any employee or employer failing to comply with the notification shall be punished with an imprisonment not exceeding six months or a fine not exceeding two thousand baht (Sections 24 and 27).

Statistics Act, B.E. 2508 (1965).

This Act revises the law relating to national statistics, in order to render more efficiency to the administration thereof. It gives the Office of National Statistics full jurisdiction over all national statistics (Section 5). It provides that a census can be taken or a survey made in pursuance of any statistical project when prescribed by a Royal Decree specifying the duration, purpose, area, statistical unit and person required to make the return thereof (Section 15). Upon the issuance of such a decree, the Secretary-General of the Office of National Statistics shall give notice specifying the return form and method of completion thereof, the time during which the duly appointed official is to forward the return form to the person required to make the return, and the time during which the person so required is to make the return (Section 16). The duly appointed official is empowered, upon the exhibition of his identity card, when requested by the person concerned, to enter the dwelling-house or office of such person, between sunrise and sunset, to examine the evidence or document relating to the statement in the return and the correctness thereof, in which case such person is to give the official reasonable facility (Section 18). This Act imposes fines on the person who fails to make a return in accordance with the specified method or to make any return in accordance with the specified method or to make any return at all, or to give the duly appointed official reasonable facility (Section 22). It also imposes fines not exceeding five hundred baht and imprisonment not exceeding three months or both on the person who knowingly makes a false statement in the return or to a duly appointed official (Secton 23), and fines not exceeding one thousand baht or imprisonment not exceeding six months or both on the person performing duty under this Act, who discloses the fact or figure of any return to any unauthorized person (Section 24).

Act on Local Development Tax, B.E. 2508 (1965).

This Act is designed with the purpose of giving the local administrations power and duties to collect the development tax themselves instead of entrusting the Revenue Department to collect and set it aside for the local administrations. It repeals Title 3 of the Revenue Code concerning Local Development Tax and provides for the land on which the tax is leviable; the person responsible for the tax; the methods of collecting tax; the assessment of tax, etc., which are mostly similar to those provided in Title 3 of the Revenue Code.

Tax on Matches Manufactured in the Kingdom Act, B.E. 2508 (1965).

This Act repeals the Tax on Matches Manufactured in the Kingdom Act, B.E. 2477 (1931) and its amendments. It has been enacted with the purpose of revising the rates of tax levied on matches manufactured in the Kingdom of Thailand in order to make them suitable to the present circumstances. It also regulates manners for the efficient control of the payment of tax by requiring the tax payer to pay the tax on matches by means of affixing excise stamps on the box of matches. Under this Act, no person is allowed to manufacture matches for sale without a permit issued by the Director-General of the Excise

Department. Each permit holds good for one year (Section 5). At the time of application for a permit to run this industry, it is required that plans and specifications of the factory to be erected be submitted. As an aid to the control of tax collection, the Director-General is empowered to alter or add to such plans and specifications (Section 6). Once the permit for constructing a factory has been issued, the builder cannot modify the approved designs or specifications unless permission has been obtained from the Director-General (Section 8). If it appears afterwards that the factory so built is different from the approved designs or specifications or modified without the Director-General's permission, the Director-General has the power to order the manufacturer to repair or alter the same so as to be in conformity with the approved designs or specifications, and the manufacture of matches is prohibited pending the necessary repair or alterations unless leniency has been given by the Director-General to allow the manufacture to continue temporarily (Section 8). The manufacturer must pay the tax on matches by means of affixing excise stamps on the box or package of matches according to the rate fixed by law (Section 9). He must also comply with the regulations determined by the Director-General on tax collection, on the manner of transporting and storing matches, on making marks on the box or package of matches, and on keeping account books on manufacturing and selling matches; failing to comply therewith is punishable (Section 12). The competent official is empowered to inspect the factory, account books or documents relating to the manufacturing and sale of matches. It is the duty of the manufacturer to render suitable facilities to the performance of duty of the official, violation of which is liable to a fine not exceeding one thousand baht (Section 18). The competent official is also empowered to inspect and search between sunrise and sunset any place which is reasonably suspected as the site of commitment of an offence under this Act (Section 19). A manufacturer who fails to comply with the provisions of this Act may, apart from the punishment inflicted according to this Act, have his permit suspended for not more than six months, or revoked by the Director-General (Section 27).

Royal Decree Controlling the Export of Certain Kinds of Goods to Foreign Countries (No. 27), B.E. 2508 (1965).

This Royal Decree has been issued under the Act Controlling the Export and Import of Certain Kinds of Goods, B.E. 2482 (1939). It prohibits the export of sorghum to foreign countries unless permission has been obtained from the Minister of Economic Affairs or the person authorized by the Minister (Section 3). However, it is not applicable to the export of the same for personal use, ship use or as samples (Section 4). The purpose of the Royal Decree is to control the export of sorghum for sale in foreign countries so that it may be carried on in good order; to prevent undue competition; and to prevent a breach of contract on the part of the seller.

Royal Decree Surveying Hill-Tribe People Living in Certain Provinces, B.E. 2508 (1965).

This Royal Decree, issued under the Statistics Act, B.E. 2508 (1965), authorizes the National Statistical Office to make, for statistical purposes, a survey of certain hill-tribe people in order to know the number, living conditions, occupation and social conditions of such people residing in the provinces prescribed by law.

Royal Decree on Teachers and Schools Census, B.E. 2508 (1965).

This Royal Decree, issued under the Statistics Act, B.E. 2508 (1965), provides for authorizing the National Statistical Office to take between 15 August B.E. 2508 (1965) and 31 August B.E. 2508 (1965) a census of teachers and schools throughout the Kingdom under the statistics programme. It has been made with a view to obtaining knowledge of the statistics of teachers and schools concerning education, schools and students conditions for the benefit of the national education planning and the planning of manpower.

Royal Decree Surveying People's Economic and Social Status in the Accelerated Rural Development Area, B.E. 2508 (1965).

Issued under the Statistics Act, B.E. 2508 (1965), this Royal Decree authorizes the National Statistical Office to survey the people's economic and social conditions in the accelerated rural development area as prescribed by law. The survey has been made with a view to getting information on living conditions, residences, professions, communications, health, property and debt, income and expenses including education of the people in the area.

Royal Decree Surveying the People's Attitude in the Accelerated Rural Development Area, B.E. 2508 (1965).

This Royal Decree, issued under the Statistics Act, B.E. 2508 (1965), authorizes the National Statistical Office for five years to survey the people's attitude in the accelerated rural development area as prescribed by law. It purpose is to get knowledge of the people's attitude in economic, social, cultural, government and state administration.

Royal Decree on Trade and Business Census, B.E. 2508 (1965).

Issued under the Statistics Act, B.E. 2508 (1965), this Royal Decree authorizes the National Statistical Office to take a census in trade and business throughout the Kingdom for collecting some facts concerning trade and business from those who earn their living in trade and business.

Royal Decree Surveying the Agricultural Products and Land Used for Agricultural Purpose, B.E. 2508 (1965).

Issued under the Statistics Act, B.E. 2495 (1952), this Royal Decree has been enacted with the purpose of authorizing the National Statistical Office to get information on land used

for agricultural purpose and on various agricultural products which are basic requirements for agricultural statistics.

Royal Decree Determining Certain Occupations and Professions for Thai Nationals (No. 4), B.E. 2508 (1965).

Issued under the Act Giving Assistance to Occupation and Profession, B.E. 2484, this Royal Decree has been enacted with the purpose of determining the tourist guide occupation as the occupation to be exercised exclusively by a Thai national.

Ministerial Regulation No. 24 (B.E. 2508), issued under the Military Service Act, B.E. 2479.

The Ministerial Regulation has been issued with the purpose of giving leniency to certain kinds of people who are exempt from military service until the completion of a 2-year period. These people are such as commissioned civil officials under the Ministry of Defence, judicial officials, public prosecutors, third class civil officials upward and graduates from abroad whose scholastic qualification is recognized by the Ministry of Education as equal to that of higher learning.

II. JUDICIAL DECISIONS

In 1965, there were two judgements of the Supreme (Dika) Court which have some bearing on the development of human rights.

Judgement of the Supreme Court No. 562/2508.

The decision was handed down by the Supreme (Dika) Court in a case relating to the constitutionality of law. In that case the accused was charged by the public prosecutor with an offence of bringing into Thailand without permission a number of Malaysian lottery tickets which is against the Act on Control of Export and Import of Certain Kinds of Goods (No. 3), B.E. 2490 (1947). The Court of First Instance passed a judgement imposing a fine on the accused and forfeiting the exhibits including the motor car which had been used in bringing the lottery tickets into the Kingdom under Section 3 of the said Act. The complainant filed a complaint that the motor car so forfeited belonged to him and was hired by the accused. He had no knowledge of the accused's commission of the offence and requested that the motor car be returned to him. The Supreme (Dika) Court decided in this connection that the forfeiture of property was a kind of criminal punishment and after considering Section 20 of the Interim Constitution which provided that " in the case where no specific provisions of the present Constitution are applicable, decision shall be based on Thai constitutional practices ",[2] coupled with Section 29 of the Constitution of the Kingdom of Thailand, B.E. 2492 (1949) which provided that " no person shall be punished for a criminal act committed by him unless, at the time of its commission, such act was an offence punishable by the law then in force ",[3] it was ruled that Section 3 of the Act on Control of Export and Import of Certain Kinds of Goods (No. 3), B.E. 2490 (1947), which provided for the forfeiture of the property used in commission of the offence irrespective of the owner of the property and whether the owner had knowledge of the commission, was contrary to the Constitution and void.

Judgement of the Supreme Court No. 177/2508.

The defendant, a police officer, was charged by the plaintiff that he had arrested the plaintiff for being involved in an arson case and that he had kept the plaintiff in custody for interrogation. At the end of a seven-day period of interrogation, the plaintiff was maliciously alleged by the defendant that he became a hooligan under the Announcement of the Revolutionary Party No. 21 and as its consequence he, who was not really a hooligan, was kept in custody for 30 more days after the expiration of the interrogation period. The defendant's malicious act was against Section 200 of the Penal Code.[4] The Supreme Court ruled that keeping the person, alleged of being a hooligan, in custody under the Announcement of the Revolutionary Party No. 21 is not a punishment or measure of safety under the Penal Code. As such keeping in custody was not a punishment or measure of safety, despite the defendant's malicious act, it was not against Section 200 of the Penal Code.

III. INTERNATIONAL AGREEMENTS

As Thailand has become a party to the Abolition of Penal Sanction (Indigenous Workers) Convention, 1955 since 21 June 1955, and Thailand's letter of ratification to the Convention was duly registered on 29 July 1964, the Convention is, accordingly, applicable to Thailand as from 30 July 1965.

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[2] See *Yearbook on Human Rights for 1959*, p. 281.

[3] See *Yearbook on Human Rights for 1949*, p. 205.

[4] *Section 200.* Whoever, being an official in the post of a Public Prosecutor, an official conducting cases, an inquiry official or an official who has the power to investigate criminal cases or to execute a criminal warrant, wrongfully exercises, or does not exercise any of his functions in order to assist any person to escape punishment or to receive less punishment, shall be punished with an imprisonment of six months to seven years and a fine of one thousand to fourteen thousand baht.

If such exercise or non-exercise is to maliciously cause any person to be punished, to be punished heavier or to be subjected to the measures of safety, the offender shall be punished with an imprisonment for life or an imprisonment of one to twenty years, and a fine of two thousand to forty thousand baht.

TOGO

NOTE [1]

Human rights are guaranteed in Togo by the Constitution of 5 May 1963, [2] the preamble of which proclaims devotion to the principles of democracy and human rights as defined in the Universal Declaration of Human Rights of 10 December 1948.

Article 1 of that Constitution reiterates the principles of the Declaration—equality of all citizens before the law, without distinction as to origin, race, sex or religion, and respect for all beliefs.

Article 2 states that no sector of the people and no individual may usurp the exercise of national sovereignty.

Article 3 provides that political parties and groups may carry on their activities freely, within the limits of the laws and regulations.

In title II of the Togolese Constitution, headed "Civil Liberties and the Human Person", articles 5 to 18 inclusive further define the guarantees enjoyed by Togolese citizens: sacredness of the human person, equality of rights, inviolability of the home, privacy of correspondence, the right to freedom of movement and residence, the right to own property, the right to freedom of expression and association, the right to education, the right to work, the right to strike, etc.

The principle of non-discrimination is thus set forth both in the preamble and in titles I and II of the Togolese Constitution; as in all democratic countries, the only limitation on the rights guaranteed is regard for public policy.

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[1] Note communicated by the Government of the Togolese Republic.

[2] For extracts of the Constitution of 5 May 1963, see the *Yearbook on Human Rights for 1963*, pp. 307 and 308.

TRINIDAD AND TOBAGO

NOTE [1]

Sections 1-2, 3 (sub-section 1), 4-15, 17-18, 22, 24-25, 29 (sub-section 1), 30-31, 34 and 38 of the 1962 Constitution of Trinidad and Tobago may be reproduced in the *Yearbook on Human Rights for 1965*. [2]

No important Court decision has been handed down relating to human rights as defined in the Universal Declaration on Human Rights.

[1] Note furnished by the Government of Trinidad and Tobago.

[2] For extracts from the Constitution of 1962, see *Yearbook on Human Rights for 1962*, pp. 294-299.

THE INDUSTRIAL STABILIZATION ACT, 1965

Act No. 8 of 1965, assented to on 20 March 1965 [1]

...

Part I

RELATIONS BETWEEN TRADE UNIONS, EMPLOYERS AND OTHER ORGANISATIONS

3. *Representative recognition; collective bargaining.* (1) For the purpose of ensuring the preservation of collective bargaining every employer shall recognise a trade union or other organisation, that is representative of 51 or a greater per cent of the workers employed by him and shall, subject to the provisions of this Act, treat and enter into such negotiations with any such trade union or organisation as may be necessary or expedient for the prevention or settlement of trade disputes.

(2) A trade union or other organisation which seeks recognition by an employer as the representative of workers employed by that employer shall specify in its claim for recognition the category or categories of worker it represents.

(3) Where an employer has any doubt as to the accuracy of any claim by a trade union to be representative of 51 per cent or a greater proportion of workers, he shall within 48 hours of the time at which the claim was made give notice to the trade union concerned that he intends to submit the matter for the determination of the Minister and shall thereupon submit the matter to the Minister together with a written statement of his reasons for doubting the accuracy of the said claim.

(4) Within seven days of the submission of the aforesaid statement, the Minister shall cause a count to be made of the workers employed by the employer concerned for the purpose of ascertaining from each worker whether or not he desires to be represented by the trade union making the claim for recognition as aforesaid; and the Minister shall inform the trade union and the employer of the result of the count.

(5) Where the trade union or the employer refuses to accept the finding of the Minister, the Minister shall refer the matter to the Court together with a statement of the result of the count, and the Court shall hear and determine the matter as if it were a trade dispute and, so far as they are applicable, the provisions of this Act relating to the settlement of trade disputes shall apply.

(6) Where the Minister or, in a case where a matter is referred to the Court under subsection (5), the Court finds that a trade union does not represent 51 per cent of the workers employed by an employer, the trade union may not earlier than six months after a count of workers has been taken apply to the Minister for a further count of such workers.

(7) An employer who, after a claim for recognition has been established in accordance with this section, fails or refuses to recognise such trade union or other organisation, is guilty of an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for two years or to both such fine and such imprisonment.

4. *Adversely affecting employee or employer on account of trade union activity.* (1) An

[1] *Trinidad and Tobago Gazette*, Extraordinary, No. 26, of 20 March 1965, Supplement.

employer shall not dismiss a worker, or adversely affect his employment, or alter his position to his prejudice, by reason of the circumstance that the worker:

(*a*) is an officer, delegate or member of a trade union or other organisation;

(*b*) is entitled to the benefit of an agreement or award under this Act;

(*c*) has appeared as a witness or has given any evidence in a proceeding under this Act;

(*d*) being a member of a trade union or other organisation which is seeking better labour conditions, is dissatisfied with his conditions; or

(*e*) has absented himself from work without leave after he has made an application for leave for the purpose of carrying out his duties or exercising his rights as an officer or delegate of a trade union or other organisation referred to in subsection (1) of section 3 and such leave has unreasonably been refused or withheld.

(2) An employer shall not threaten to dismiss a worker, or to affect adversely his employment, or to alter his position to his prejudice:

(*a*) by reason of the circumstance that the worker is, or proposes to become, an officer, delegate or member of a trade union or other organisation or of an association that has applied to be registered as a trade union, or that the worker proposes to appear as a witness or to give evidence in a proceeding under this Act;

(*b*) with intent to dissuade or prevent the worker from becoming such officer, delegate or member or from so appearing or giving evidence.

...

Part II

CONSTITUTION, POWERS, ETC., OF COURT

5. *Establishment of Industrial Court.* (1) For the purposes of this Act, there shall be established an Industrial Court.

(2) The Court shall have jurisdiction:

(*a*) to hear and determine trade disputes;

(*b*) to register industrial agreements and to hear and determine matters relating to the registration of such agreements;

(*c*) to hear and determine complaints relating to the price of goods and commodities;

(*d*) to hear and determine any complaint brought in accordance with this Act as well as such matters as may from time to time be referred to it under this Act.

...

Part IV

INDUSTRIAL AGREEMENTS

18. *Industrial agreements.* (1) Subject to the provisions of this Part, any trade union or other organisation may make an industrial agreement with any other organisation or with any employer (in this Part referred to as an "industrial agreement") for the terms of the employment and the conditions of labour of any worker and for the prevention and settlement of existing or future industrial disputes by conciliation and arbitration.

(2) Every industrial agreement shall contain provisions for the setting up of effective machinery to deal with grievances of workers.

...

Part VI

LOCKOUTS AND STRIKES

34. *Lockouts and strikes.* (1) An employer shall not declare or take part in a lockout and a worker shall not take part in a strike in connection with any trade dispute unless:

(*a*) the dispute has been reported to the Minister in accordance with the provisions of this Act; and

(*b*) the Minister has not referred the dispute to the Court for settlement within 28 days of the date on which the report of the dispute was first made to him; and

(*c*) the Minister has, within 48 hours of the decision to go on strike been given 14 days' notice in writing by the trade union or other organisation of its intention to call a strike or declare a lockout, as the case may be, so, however, that no such strike shall be called or lockout declared until after the last day on which the Minister may refer the dispute to the Court.

...

35. *Strikes or lockouts prohibited during hearings, etc.* (1) No worker may go on strike and no employer may declare a lockout while proceedings in relation to a trade dispute between such worker and such employer are pending before the Court or the Court of Appeal.

...

36. *Strikes and lockouts in essential services prohibited.* (1) Subject to subsection (2), this Act applies to employers and workers engaged in essential services.

(2) An employer or a worker carrying on or engaged in essential services shall not declare a lockout or take part in a strike in connection with any such essential service.

37. *Public officers prohibited from striking.* (1) The following persons shall not take part in any strike:

(*a*) members of the public service of Trinidad and Tobago;

(*b*) members of the Trinidad and Tobago police force, the special reserve police, the estate police, and the police force of any municipality;

(*c*) members of the prison services of Trinidad and Tobago;

(*d*) members of the fire services of Trinidad and Tobago; and

(*e*) members of the Trinidad and Tobago defence force.

...

TUNISIA

ACT No. 65-17 OF 28 JUNE 1965 (28 SAFAR 1386) EXTENDING SOCIAL SECURITY SCHEMES TO STUDENTS [1]

Art. 1. The social security schemes established by Act No. 60-30 of 14 December 1960 (24 *Jumada* II 1380) [2] shall be extended to students within the limits and under the conditions set forth in this Act.

Art. 2. It shall be compulsory for Tunisian students who are duly registered in higher educational establishments in Tunisia and who are not covered by social security schemes either in their own name or as dependants, to join social security schemes.

Foreign students may not benefit under these schemes except on the basis of reciprocity agreements.

Art. 3. The conditions to be fulfilled by those affected and the list of establishments referred to in article 2 above shall be fixed by decree, following consultations with the organization representing the students.

The maximum age for benefits under the allowance schemes shall be the completion of the twenty-eighth year. It may, however, be extended by a period equivalent to the time spent in military service or in the civil service, or the time during which the student was obliged to interrupt his or her studies owing to prolonged illness or maternity.

Art. 4. Students covered by this Act shall be entitled to medical care and hospitalization, and also to family allowances.

...

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[1] *Journal officiel de la République tunisienne*, No. 34, of 25-29 June 1965 (25-29 *Safar* 1386).

[2] For a summary of Act No. 60-30 of 14 December 1960 (24 *Jumada* II 1380), see the *Yearbook on Human Rights for 1960*, p. 324.

TURKEY

NOTE [1]

I. No amendments to the Constitution of the Turkish Republic were made in 1965.

II. The following laws relating to human rights were adopted:

(1) Act No. 578, dated 8 April 1965, ratifying the Convention on Maternal Filiation of Natural Infants, which was signed at Brussels on 12 September 1962 (*Official Gazette* No. 11978, of 17 April 1965).

(2) Act No. 624, dated 8 June 1965, concerning Trade Unions of Employees of the State (*Official Gazette* No. 12025, of 17 June 1965).

Under the provisions of the first paragraph of article 46 of the Constitution of the Turkish Republic, employees and employers have the right to establish trade unions and federations of trade unions without obtaining permission to do so, and the right freely to become members of and resign from such organizations.

The second paragraph of the same article provides that in the case of public service employees who are not considered to be workers such rights shall be regulated by law. Act No. 624 concerning Trade Unions of Employees of the State was adopted by the Turkish Grand National Assembly pursuant to this provision.

In accordance with article 1 of the Act, "The provisions of this Act shall apply to trade unions formed by public service employees not considered to be workers for the protection of their common professional, cultural, social and economic rights and interests and, in particular, for the purposes of professional advancement and mutual assistance".

Under article 2 of the Act, trade unions of State employees "may be formed by regular employees of, and other employees serving continuously in, general and annexed budget agencies, local provincial administrations, municipalities and village administrations, organizations connected with general and annexed budget agencies, local provincial administrations or municipalities, and State economic enterprises and banks and enterprises set up under special laws or by virtue of the authority conferred by special laws, which are engaged in the public services for the functioning of which, in accordance with the general principles of administration applicable to the State and other public bodies corporate, such employees are responsible, and persons who have retired from such posts and who do not have a legal or contractual status other than that of retirement".

(3) Act No. 625, dated 8 June 1965, concerning Private Educational Establishments (*Official Gazette* No. 12026, of 18 June 1965).

This Act regulates the establishment and supervision of private educational establishments, the status of the directors and teaching staff of such establishments, and other matters relating to private education.

According to article 1 of the Act, private educational establishments are "schools providing instruction at any level, establishments offering instruction by correspondence, establishments offering courses of any kind, training centres, schools teaching sewing and tailoring, and similar establishments, founded by private individuals who are nationals of the Turkish Republic, bodies corporate under private law or bodies corporate administered in accordance with the provisions of private law, and educational establishments founded by aliens".

(4) Act No. 647, dated 13 July 1965, concerning the Execution of Penalties (*Official Gazette* No. 12050, of 13 July 1965).

This Act revises the Turkish system of execution of penalties with a view to rehabilitating convicts and enabling them to return to society. It may be stated without hesitation that this is one of the world's most advanced laws concerning execution of penalties.

(5) Act No. 648, dated 13 July 1965, concerning Political Parties (*Official Gazette* No. 12050, of 13 July 1965).

Articles 56 and 57 of the Constitution of the Turkish Republic read as follows:

> "*Art. 56.* Citizens have the right to establish political parties and, pursuant to the relevant rules and procedures, to join and withdraw from them.
>
> "Political parties may be established without prior permission, and they may operate freely.
>
> "Political parties, whether in power or in opposition, are indispensable elements of democratic political life."

[1] Note furnished by the Government of Turkey.

"*Art. 57.* The statutes, programmes and activities of political parties shall conform to the principles of a democratic and secular republic based on human rights and freedoms and to the fundamental provision that the State, with its territory and nation, is indivisible. Parties failing to conform to these principles shall be permanently dissolved.

"Political parties shall report their sources of income and their expenditures to the Constitutional Court.

"The internal affairs of political parties, the manner in which they shall report to the Constitutional Court and the manner in which the Court shall audit their finances shall be regulated by law in accordance with democratic principles.

"Actions at law for the dissolution of political parties shall be heard by the Constitutional Court and it alone may take decisions to dissolve them."

Bearing in mind these provisions of the Constitution of the Turkish Republic, the legislature has regulated the establishment, activities, internal affairs, sources of income, financial supervision and dissolution of political parties and other matters relating to them.

III. Court decisions relating to human rights:

(A) Decisions of the Constitutional Court:

(1) Decision No. 1964/74, of 17 December 1964, originally No. 1963/121 (*Official Gazette* No. 11968, of 1 April 1965).

(2) Decision No. 1965/16, of 16 March 1965, originally No. 1963/109 (*Official Gazette* No. 12108, of 23 September 1965).

(3) Decision No. 1965/36, of 8 June 1965, originally No. 1963/163 (*Official Gazette* No. 12117, of 4 October 1965).

(4) Decision No. 1965/13, of 5 March 1965, originally No. 1963/171 (*Official Gazette* No. 12150, of 13 November 1965).

(5) Decision No. 1965/56, of 26 October 1965, originally No. 1965/39 (*Official Gazette* No. 12191, of 31 December 1965).

(6) Decision No. 1965/24, of 5 April 1965, originally No. 1965/2 (*Official Gazette* No. 12202, of 14 January 1966).

(B) Decision of the Court of Appeals:

Decision of the full bench:

Decision No. 1965/3, of 14 June 1965, originally No. 1965/3 (*Official Gazette* No. 12049, of 15 July 1965).

UGANDA

THE TRADE UNIONS ACT, 1965

Act No. 11 of 1965, assented to on 25 June 1965 [1]

Part I

ADMINISTRATION

1. (1) The Minister shall appoint a Registrar of trade unions who shall be responsible for the due performance of the functions conferred upon the Registrar by this Act.

...

9. (1) No trade union or any member thereof shall perform any act in furtherance of the objects for which it has been formed unless the trade union has been registered in accordance with the provisions of this Act.

...

Part III

CONSTITUTION AND RULES

16. (1) Subject to the rules thereof, a person under the apparent age of twenty-one years, but above the apparent age of sixteen,

(*a*) may be a member of an employees' association or a registered trade union; and

(*b*) shall enjoy all the rights of a member save as otherwise provided in this Act.

(2) A minor shall have capacity to execute all instruments and give all acquittances necessary to be executed or given under the rules of the employees' association or the registered trade union of which he is a member.

(3) A minor shall not be a member of the executive or a trustee of a registered trade union.

...

Part VI

PICKETING, INTIMIDATION, DISPUTES, ETC.

44. (1) Notwithstanding anything contained in this Act,

(*a*) it shall be lawful for one or more persons acting on their own behalf or on behalf of a registered trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working;

(*b*) it shall not be lawful for one or more persons, whether acting on their own behalf, of a registered trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working if they so attend in such numbers or otherwise in such manner as to be calculated,

(i) to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or

(ii) to lead to a breach of the peace.

(2) For the avoidance of doubts, it is hereby declared that notwithstanding the provisions of this or any other enactment it shall be an offence for any person, in contemplation or furtherance of a dispute within the meaning of section (2) of the Public Service (Negotiating Machinery) Act, 1963, to attend at or near any premises or land occupied by the Government.

(3) Any person who acts in contravention of the provisions of paragraph (*b*) of the subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

45. (1) Any person who, with a view to compelling any other person to abstain from doing or to do any act which the other person has a legal right to do or abstain from doing, wrongfully and without legal authority,

(*a*) uses violence to or intimidates such other person or his wife or children, or injures his property, or

(*b*) persistently follows such other person about from place to place, or

[1] Published and printed by the Government Printer, Entebbe, Uganda.

(*c*) hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof, or

(*d*) watches or besets the house or other place where such person resides or works or carries on business or happens to be or the approach to such house or place, or

(*e*) follows such other person in a disorderly manner in or through any street or road,

commits an offence and shall be liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months.

(2) For the purposes of this section, attending at or near any house or place in such numbers or in such manner as is, by paragraph (*b*) of section 44 of this Act, declared to be unlawful, shall be deemed to be a watching and besetting of that house or place within the meaning of this section.

46. (1) An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be punishable as a conspiracy if such act committed by one person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

(3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any enactment.

(4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the President or the Government.

(5) For the purposes of this section, a crime means an offence for the commission of which the offender is liable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

47. (1) No employer shall make it a condition of employment of any employee that that employee shall neither be nor become a member of a registered trade union or other organisation representing employees in any industry nor participating in the activities of a registered trade union.

(2) Save as is otherwise provided by subsection (1) of section 25 of the Public Service (Negotiating Machinery) Act, 1963, nothing contained in any law shall prohibit any employee from being or becoming a member of any registered trade union or organisation as aforesaid, or subject him to any penalty by reason of his membership of, or participation in the activities of, any such trade union or organisation.

(3) Any employer who contravenes the provisions of subsection (1) of this section commits an offence and shall be liable on conviction to a fine of one hundred pounds or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Part VII

EMPLOYEES' ASSOCIATIONS

48. (1) All employees' associations shall, so soon as they are established, notify their establishment to the Registrar.

(2) An employees' association or any person on its behalf, shall not collect from its members or from any other person any subscription or pecuniary contribution to its funds, other than an annual contribution to an office expense fund or welfare fund, nor shall it create any fund other than an office expense fund or welfare fund.

(3) An employees' association may at any time apply to the Registrar under the provisions of subsection (1) of section 3 of this Act for registration as a trade union and on such registration as a trade union, the association shall cease forthwith to be an employees' association.

(4) Whenever the Minister is satisfied that an employees' association is conducting its affairs in such a manner that it should be regarded as a trade union he may order the association to apply for registration as a trade union; and upon such application being made the provisions of subsection (3) of this section shall apply to such association.

(5) Where any employees' association contravenes any of the provisions of this section, or fails to comply with an order made by the Registrar by virtue of the provisions of subsection (4) of this section, any person who is responsible for such disobedience or contravention commits an offence and shall be liable on conviction to a fine not exceeding fifty pounds.

(6) Where an employees' association is an association of teachers the functions of the Minister shall be performed in consultation with the Minister responsible for education.

...

THE PUBLIC LAND (COMPENSATION FOR RESUMPTION) ACT, 1965

Act No. 12 of 1965, assented to on 25 June 1965 [2]

1. (1) Where public land is resumed by the controlling authority, the occupier of the land shall be entitled to be paid compensation by the controlling authority in accordance with the provisions of this Act.

(2) No public land shall be resumed by the controlling authority unless three months' notice in writing to give up vacant possession shall have been given to the occupier thereof.

...

5. (1) Any dispute as to the compensation payable under this Act shall, within thirty days of the expiration of the notice to give up vacant possession, be referred by the controlling authority to the court for decision.

(2) References to the court under this section shall be made by motion to the subordinate court established in the area in which the land is situated.

(3) A subordinate court shall have power to hear and determine a reference under this section notwithstanding any limitation on its jurisdiction in relation to the value of the subject matter in dispute.

6. Any party to the proceedings on a reference under section 5 of this Act who is aggrieved by the court's decision thereon may appeal against the decision to the High Court.

...

[2] *Ibid.*

THE PUBLIC HOLIDAYS ACT, 1965

Act No. 23 of 1965, assented to on 29 June 1965 [3]

...

2. (1) Every employer shall pay to each of his employees in respect of every public holiday, the full remuneration which would have been payable to the employee for a full day's work if that day had not been a public holiday.

(2) Where any employee attends or performs work for a full day or more on a public holiday, the employer shall pay to the employee in addition to the remuneration prescribed by the preceding subsection, an amount of money not less than the remuneration which would have been payable to the employee for the work if that day had not been a public holiday or shall grant the employee leave with full pay in lieu thereof.

(3) Where any employee attends and performs work for part only of a public holiday, an employer shall pay to the employee in addition to the remuneration prescribed by subsection (1) of this section, the proportion of the remuneration for a full day's work on that day if that day had not been a public holiday, represented by the number of hours for which the employee has performed work.

(4) Where any payment is required to be made under any of the foregoing provisions of this section in respect of any public holiday, the payment shall be made within one month after the public holiday.

(5) Any person who contravenes any of the foregoing provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding ten pounds.

(6) In any proceedings against an employer under the provisions of this section, the court may, on conviction, order the employer to pay in addition to the fine if any, such sum of money as appears to the court to be due to the employee on account of any remuneration payable to him under this section, and may in that order, specify the time within which such payment shall be made.

...

[3] *Ibid.*

UKRAINIAN SOVIET SOCIALIST REPUBLIC

NOTE [1]

In 1965, as in previous years, constant attention was devoted in the Ukrainian SSR to ensuring the practical exercise by citizens of the Republic of their democratic rights and freedoms.

The successful development of the national economy of the Ukrainian SSR in 1965 made possible a further improvement in the material well-being and cultural level of the population.

The practical realization of the very important social, economic and cultural rights in the Ukrainian SSR is testified to by the data contained in the report of the Central Statistical Board of the Council of Ministers of the Ukrainian SSR on the fulfilment of the State plan for the development of the national economy of the Ukrainian SSR in 1965, extracts from which are given below.

The average annual employment figure for manual and non-manual workers in the national economy of the Ukrainian SSR was almost 13.4 million, an increase of 700,000 over the preceding year. The number of manual, engineering and technical and other workers employed in industry, construction and agriculture increased by 395,000; the number of workers employed in transport, communications, trade and public catering increased by 109,000; and the number of workers at schools, educational, scientific research and medical institutions, preschool establishments and housing and municipal services increased by 148,000.

During the year, 170,000 skilled workers were trained in vocational and trade schools. In addition, 2.5 million persons obtained higher qualifications or trained for new occupations directly at enterprises and collective farms by receiving individual or group instruction or taking courses.

At the end of 1964 and again in 1965, the wages of workers directly serving the population were raised. There were pay increases for almost 3.5 million workers in education, health, housing and municipal services, trade, public catering and other services.

As a result of these measures, there were average wage increases of 26 per cent for workers in education, 23 per cent for health workers, 15 per cent for workers in housing and municipal services and 19 per cent for workers in trade and public catering.

As of 1 January 1965, the minimum wage of manual and non-manual workers in all branches of the economy where there had not already been an increase, was raised.

Beginning with 1965, a State pension scheme was introduced for collective farm workers. As at 1 January 1966, over 2 million persons were receiving pensions from the central Union collective farm workers' social security fund.

Payments and benefits received by the population from social consumption funds, in the form of social insurance payments, various allowances, pensions, education grants, leave with pay, free education and free medical care, travel to and accommodation at sanatoria and rest homes free of charge or at reduced fees, maintenance of children's homes, crèches, etc., totalled 7,200 million roubles in 1965, or 11 per cent more than in 1964.

Further progress was made in public education, science and culture.

In the past year, 13.8 million people were receiving education in one form or another; the enrolment at general education schools of all kinds was 8.7 million, or nearly 150,000 more than in 1964. Over 831,000 pupils graduated from eight-year schools and more than 422,000 received secondary education. Enrolment in extended-day schools and groups and boarding schools was 847,000 odd.

Over 1.3 million persons are studying in higher and specialized secondary educational establishments—690,000 at the former and 646,000 at the latter. In 1965, more than 196,000 specialists with higher or specialized secondary education—nearly 72,000 in the former and over 124,000 in the latter category—were absorbed into the national economy.

In the past year, over 344,000 students enrolled at higher and specialized secondary educational establishments—more than 149,000 in the former and over 195,000 in the latter.

At the end of 1965, there were 26,200 cinema installations—an increase of almost 800 over the previous year. The figure for cinema attendance was 850 million, or 60 million more than in 1964.

There was large-scale construction of housing. A total of 13.2 million square metres of housing—

[1] Note furnished by the Government of the Ukrainian Soviet Socialist Republic.

435,000 square metres more than in 1964—financed by the State or by manual and non-manual workers with the help of State loans, was brought into occupancy in the towns and villages of the Republic. Of this total, 898,000 square metres—or 36 per cent more than in 1964—was built by housing co-operatives.

In addition, 100,000 dwellings were built on collective farms (by the collective farms or some of their members and the rural intelligentsia).

In 1965 alone, nearly 1.9 million persons moved into new apartments and houses or improved their old dwellings.

State organizations and collective farms constructed and put into operation general education schools with 244,000 places, medical institutions with almost 12,000 beds, pre-school establishments with 105,000 places and a number of other cultural and social facilities.

Medical services to the population improved. The number of doctors of all kinds increased by 5,000 in 1965. The number of beds in hospitals, sanatoria and rest homes also increased.

The population of the Ukrainian SSR on 1 January 1966 was 45.5 million.

(From the newpaper, *Pravda Ukrainy*, No. 30 (7271), 5 February 1966)

Among the legislative and regulatory measures concerning human rights enacted in the Ukrainian SSR in 1965, mention may be made of the following:

By an order of 5 February 1965, the Presidium of the Supreme Soviet of the Ukrainian SSR decreed that, for elections to the local Soviets of Working People's Deputies in the Ukrainian SSR, polling centres shall be set up at airports, at large railway stations and in long-distance passenger trains to enable voters who are travelling on the day of the elections to deposit their ballots.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1965, No. 8, p. 142)

By decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 20 March 1965, certain amendments and additions were introduced in the Statute concerning the comrades' courts and in the Criminal Code of the Ukrainian SSR. They are of interest in two respects:

(1) The jurisdiction of the comrades' courts has been expanded to include some cases of minor misappropriation of State or public property formerly dealt with by the criminal courts.

(2) An addition has been made to the Criminal Code of the Ukrainian SSR in the form of article 84 which states that misappropriation of State or public property, committed for the first time and on a small scale, is punishable with a fine amounting to three times the value of the property misappropriated. In essence, this regulation reduces the application of the criminal penalty of deprivation of liberty and extends financial liability for mercenary crimes.

These regulations reflect the general tendency of our legislation to limit progressively the sphere of criminal law, to increase the role of public and administrative suasion and to impose financial penalties on persons who have committed offences not constituting any great danger to society.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1965, No. 14, p. 244)

Having considered the further improvement of the work of schools, vocational and trade schools and secondary educational establishments, the Supreme Soviet of the Ukrainian SSR noted, in an order of 29 June 1965, that significant progress had been achieved in raising the standard of general education and vocational training for young people in the Republic and instructed the appropriate organs, *inter alia*, "... to provide unconditionally, at the appropriate time, employment for school graduates, adolescents and young people, to see that they acquire skills and improve their qualifications ... to create suitable working, housing and living conditions".

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1965, No. 28, p. 450)

By an order of 13 August 1965, the Presidium of the Supreme Soviet of the Ukrainian SSR introduced, with effect as of 1 September 1965, regular free transportation to and from school for all pupils at primary, eight-year and general secondary schools resident in rural areas. Express buses, the transport of enterprises and organizations and suburban and local trains are used for this purpose.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1965, No. 35, p. 559)

By a decree of 14 October 1965, the Presidium of the Supreme Soviet of the Ukrainian SSR established the following new regulation for the election of people's judges to district (city) people's courts:

> "People's judges shall be elected at as many electoral wards in the district or city as there are people's judges to be elected to a particular district (city) court. One people's judge shall be elected from each electoral ward."

The new regulation will make the system of court elections more democratic, because the electors will know the judges they elect better and will be in a better position to control the judge's activities.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1965, No. 43, p. 676)

By Order No. 270 of 16 March 1965 on the granting of loans to collective farm workers for housing construction, the Council of Ministers of the Ukrainian SSR decreed that State loans in an amount not exceeding 1,500 roubles may be accorded for a period of up to seven years to collective farm workers building individual dwellings in rural areas. In addition, the executive

committees of the regional Soviets of Working People's Deputies and the ministries concerned were invited to take the necessary measures to assist collective farm workers in constructing individual dwellings and supervise the quality of the construction.

(*Collection of Orders,* 1965, No. 3, p. 25)

By Order No. 354 of 10 April 1965, the Council of Ministers of the Ukrainian SSR instructed the local organs of government, and the ministries and departments of the Republic to establish a special quota of up to 2 per cent of the total number of manual and non-manual workers for the employment of persons disabled in the Patriotic War and members of the families of servicemen killed during the War. In addition, these persons are to be given additional privileges, such as:

interest-free loans of up to 1,000 roubles for individual housing construction, repayable over ten years, starting from the third year of the loan;

preference in obtaining living space in houses managed by the local Soviets;

precedence over others for admission to hospital.

(*Collection of Orders of the Ukrainian SSR,* 1965, No. 4, p. 47)

In view of the increasing use in agriculture of chemical means of plant protection, on 15 April 1965 the Council of Ministers of the Ukrainian SSR adopted Order No. 361 on measures to protect the health of the population, in connexion with the widespread use in agriculture of chemical means of plant protection.

The order lays down a series of measures to protect the health of the population. For example, in addition to making regular medical examinations compulsory for people whose work is connected with the use, storage or transportation of toxic chemicals, it provides for expansion of the network of epidemiological laboratories which check to see that there is no accumulation of toxic chemicals in agricultural produce intended for human consumption.

(*Collection of Orders of the Ukrainian SSR,* 1965, No. 4, p. 48)

By Order No. 519 of 26 May 1965 on new measures for the better protection of human lives in rivers, lakes and coastal areas of the Ukrainian SSR, the Council of Ministers of the Ukrainian SSR noted that accidents on and in the water are often due to shortcomings in the organization of rescue services.

In order to eliminate these shortcomings, the order instructs the executive committees of the regional Soviets of Working People's Deputies and the ministries concerned to consider without delay the position with regard to the protection of human lives on and in the water and to elaborate and enact measures designed to prevent accidents of that kind.

The order provides, *inter alia,* for the construction of new life-saving stations, the provision during the summer of medical staff and life-saving equipment on beaches and at public bathing places and the introduction into Ukrainian schools of instruction in swimming and proper behaviour on the water.

(*Collection of Orders of the Ukrainian SSR,* 1965, No. 5, p. 62)

By Order No. 1178 of 8 December 1965, the Council of Ministers of the Ukrainian SSR confirmed the Instructions containing rules for payment for legal assistance furnished by lawyers to citizens, enterprises, institutions, State farms, collective farms and other organizations in the Ukrainian SSR.

As regards legal assistance furnished to the public, the Instructions state, *inter alia,* that legal assistance shall be furnished free of charge in cases such as, for instance, the pleading of suits for the recovery of alimony, the pleading of labour cases, and the pleading of suits for damages caused by maiming or other injury to health sustained at work. The Instructions also give the Presidium of the College of Advocates and the heads of legal consultation offices the right to waive payment for legal assistance, depending on the financial circumstances of the citizens concerned.

(*Collection of Orders of the Ukrainian SSR,* 1965, No. 12, p. 153)

UNION OF SOVIET SOCIALIST REPUBLICS[1]

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR ON THE PUNISHMENT OF PERSONS GUILTY OF CRIMES AGAINST PEACE AND HUMANITY AND OF WAR CRIMES, REGARDLESS OF THEIR DATE

Adopted by the Supreme Soviet on 4 March 1965

The Nazi criminals who precipitated the Second World War inflicted untold disasters and suffering on mankind. Tens of millions of completely innocent people, including children, women and aged persons, were brutally murdered, exterminated in death camps and asphyxiated in gas chambers. The German Nazi invaders were guilty of having carried vast numbers of civilians away into slavery, of inhuman treatment of prisoners of war, and of the barbarous destruction of thousands of towns and villages.

The peoples of the Soviet Union, which suffered the greatest losses in the war, cannot allow the Nazi barbarians to go unpunished. The Soviet State has unswervingly followed the generally accepted norms of international law concerning the need to punish Nazi criminals, no matter where or for how long they may have hidden from justice.

Considering that the conscience and the sense of justice of the peoples rebel against the fact that Nazi criminals who committed heinous crimes during the Second World War go unpunished,

Recognizing that these persons cannot count on having their crimes forgiven or forgotten,

The Presidium of the Supreme Soviet of the USSR, in accordance with the generally accepted principles of international law, as set out in the Charter of the International Military Tribunal and in resolutions of United Nations General Assembly, *Resolves that:*

Nazi criminals, who are guilty of heinous crimes against peace and humanity and of war crimes, must be brought to judgement and punished, regardless or how much time has passed since they committed the crimes.

[1] Texts furnished by the Government of the Union of Soviet Socialist Republics.

DECREE OF THE PRESIDIUM OF THE SUPREME COURT OF THE USSR AMENDING THE PROCEDURE FOR THE JUDICIAL HEARING OF DIVORCE SUITS

Adopted by the Supreme Soviet on 10 December 1965

The Presidium of the Supreme Soviet of the USSR *Resolves:*

1. That judgements in divorce suits shall be pronounced by district (urban) people's courts.

2. That in accordance with article 1 of this Decree, articles 25 and 26 of the Decree of the Presidium of the Supreme Soviet of the USSR of 8 July 1944 providing for increased State assistance to pregnant women, mothers of large families and unmarried mothers and greater mother and child protection, and establishing the honorific title "Mother-Heroine", the order "Glory of Motherhood" and the medal "Medal of Motherhood" (Gazette of the Supreme Soviet of the USSR, 1944, No. 37) shall read as follows:

"25. The district (urban) people's court shall ascertain the grounds upon which the divorce petition has been filed and take steps to reconcile the spouses.

"The district (urban) court may postpone its hearing of the suit and designate a time-limit for the reconciliation of the spouses.

"If no reconciliation takes place and the court satisfies itself that the continued cohabitation of the spouses and the preservation of the family have become impossible, the district (urban) people's court shall declare the marriage dissolved.

"27. In declaring a marriage dissolved, the district (urban) people's court shall:

"(*a*) Make orders as to the custody and maintenance of the children;

"(*b*) Determine the specific or proportionate division of the property between the parties;

"(*c*) Restore to each divorced spouse, on request, his or her surname before marriage."

3. In article 24 of the Decree of the Presidium of the Supreme Soviet of the USSR of 8 July 1944, sub-paragraph (*c*) concerning the publication in local newspapers of notices of divorce proceedings shall be deleted.

In article 24, sub-paragraph (*a*) of the same Decree, the words "people's court" shall be replaced by the words "district (urban) people's court".

4. The Presidia of the Supreme Soviets of the Union Republics shall amend the laws of the Union Republics in accordance with this Decree.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR PROCLAIMING 9 MAY A HOLIDAY

Adopted by the Supreme Soviet on 26 April 1965

The Presidium of the Supreme Soviet of the USSR *Resolves that:*

The ninth of May—the anniversary of the victory of the Soviet people in the Great Patriotic War of 1941-1945—shall henceforth be treated as a holiday.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR PROCLAIMING 8 MARCH, INTERNATIONAL WOMEN'S DAY, A HOLIDAY

Adopted by the Supreme Soviet on 8 May 1965

The Presidium of the Supreme Soviet of the USSR *Resolves that:*

In recognition of the outstanding services of the Soviet women in the building of communism and the defence of the Fatherland during the Great Patriotic War and their heroism and selflessness on the battlefront and the home front, and in consideration of the great contribution of women to strengthening friendship among peoples and the struggle for peace,

International Women's Day, 8 March, shall be a holiday in the USSR.

ORDER OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR PROVIDING FREE TRANSPORT FOR CHILDREN RESIDENT IN RURAL AREAS

Adopted on 9 July 1965

The Presidium of the Supreme Soviet of the USSR *Resolves:*

1. The proposal of the Legislative Proposals Commissions and Budgetary Commissions of the Soviet of the Union and the Soviet of Nationalities of the Supreme Soviet of the USSR that free transport to and from school should be provided for school children resident in rural areas is hereby approved.

2. The Presidia of the Supreme Soviets of the Union Republics shall be recommended to take steps to provide, from 1 September 1965, regular free transport to and from school for pupils of elementary, eight-year and secondary general education schools resident in all rural areas, and to ensure that the necessary arrangements are made in the budgets of the Union Republics.

In organizing free transport for school children, use shall be made of express buses, the transport facilities of State farms and other enterprises and organizations, suburban and local trains, and the transport facilities of collective farms.

3. The announcement of the Ministry of Communications of the USSR that free transport to and from school on suburban and local trains for pupils of elementary, eight-year and secondary general education schools resident in rural areas will be introduced from 1 September 1965 is hereby noted.

COUNCIL OF MINISTERS OF THE USSR

Order of 28 December 1965, No. 1128
The Kremlin, Moscow

(EXTRACT)

Abolition of maintenance charges for tubercular children in children's sanatoria

The Council of Ministers of the USSR *Resolves:*

That maintenance charges for tubercular children in pre-school tubercular sanatoria, boarding-school sanatoria, and woodland-school sanatoria shall be abolished from 1 January 1966.

COUNCIL OF MINISTERS OF THE USSR

Order of 11 March 1965, No. 168
The Kremlin, Moscow

(EXTRACT)

Abolition of compulsory deliveries of agricultural produce to the State by individual peasant farms and home craftsmen's farms

The Council of Ministers of the USSR *Resolves:*

1. Compulsory deliveries of agricultural produce to the State by individual peasant farms and farms of home craftsmen resident in rural areas shall be abolished from 1 January 1966.

2. The liability of the said farms for compulsory deliveries of agricultural produce to the State as at 1 January 1965 shall be cancelled.

COUNCIL OF MINISTERS OF THE USSR

Order of 6 March 1965, No. 140
The Kremlin, Moscow

(EXTRACT)

Extending the benefits of disabled veterans of the Patriotic War and families of military personnel who died in the Great Patriotic War

With a view to improving the material provision for disabled veterans of the Great Patriotic War and families of military personnel who died in the Great Patriotic War, and to improving medical services and employment opportunities for such persons, the Council of Ministers of the USSR *Resolves:*

1. The Councils of Ministers of the Union Republics and the Ministries and Departments of the USSR shall be directed to fix a quota of up to 2 per cent of the total number of manual and non-manual workers, according to industry, for the employment of disabled veterans of the Patriotic War.

Directors of enterprises, institutions and organizations shall be required to create the necessary conditions for the employment of disabled veterans by organizing special workshops and departments, where production conditions permit, and by expanding facilities for out-work.

2. Directors of enterprises, institutions and organizations shall be authorized to employ disabled veterans of the Patriotic War on a part-time basis, paying them for actual output or actual time worked.

4. Disabled veterans of the Patriotic War shall be required to pay 20 per cent of the cost of medicines issued to them under doctor's prescription (except where the law provides for the free supply of medicaments to out-patients).

6. The Councils of Ministers of the Union Republics shall take steps to make radical improvements in medical services and preventive care for disabled veterans of the Patriotic War, and shall ensure that the latter are given priority in out-patient polyclinics and admission to hospitals.

7. Councils of Ministers of the Union Republics, Regional Economic Councils, Ministries

and Departments and the Executive Committees of local Soviets of Working People's Deputies shall give disabled veterans of the Patriotic War and families of military personnel who died in the Patriotic War every assistance in obtaining housing on a priority basis and in the construction of private homes:

Disabled veterans of the Patriotic War shall be granted interest-free private housing construction loans of up to 1,000 roubles, repayable over a ten-year period commencing with the third year after the loan was issued. Housing plots shall be allotted in accordance with the regulations of the Union Republics.

8. The Councils of Ministers of the Union Republics shall be instructed to arrange for credit sales of manufactured goods to disabled veterans of the Patriotic War (unemployed pensioners) in urban and rural areas.

9. Group I and Group II disabled veterans of the Patriotic War and Group III limbless veterans of the Patriotic War shall be granted free travel on all types of urban transport (except taxis).

10. Note is taken of the announcement by the All-Union Central Council of Trade Unions that the trade unions will:

Give preference to disabled veterans of the Patriotic War in the allocation of places at sanatoria, preventive health sanatoria and rest homes and for treatment as out-patients at spas;

Furnish the Ministry of Defence of the USSR and the Ministries of Social Security and Health of the Union Republics, on their application, with vouchers for travel to and accommodation at such institutions;

Give children of disabled veterans of the Patriotic War preference in the allocation of places at pioneer camps.

ORDER No. 7 OF 11 OCTOBER 1965 OF THE PLENUM OF THE SUPREME COURT OF THE USSR

Implementation by the courts of the Orders of the Plenum of the Supreme Court of the USSR of 4 March 1961 and 18 December 1963 relating to the conditional early release of convicted persons

(EXTRACT)

The Plenum of the Supreme Court of the USSR *Resolves:*

1. The attention of the courts shall be drawn to the fact that strict and consistent application of the statutory provisions relating to the conditional early release of persons who have shown evidence of reform is of crucial importance for the work of re-educating convicted persons, improving crime prevention and eliminating recidivism.

2. In accordance with the statutory provisions, courts considering the conditional early release of convicted persons or the commutation of their unexpired sentences must approach each case on a strictly individual basis. Both conditional early release and commutation are acts of encouragement and may be granted only in the case of convicted persons whose exemplary conduct and honest attitude to labour gives evidence of their reform.

Courts must in all cases be guided by the explanations provided in the Orders of the Plenum of the Supreme Court of the USSR of 4 March 1961 and 18 December 1963 concerning the comprehensive and careful examination of all circumstances pertaining to the convicted person, so as to ensure that conditional early release is granted only on correct grounds and that no convicted person who has shown evidence of reform is unjustifiably denied remission of his sentence.

3. In deciding whether to order the conditional early release of persons convicted of serious crimes and of persons having previous convictions, the courts must bear in mind that in such cases stricter requirements must be applied as to conduct in prison and attitude to labour.

4. The courts shall be recommended to consider, in the light of the nature of the crime committed and the character of the convicted person, the possibility of commuting the unexpired portion of the latter's sentence, if it forms the conclusion that this measure would be more effective than conditional early release.

5. The courts must lay down stricter conditions with respect to proposals for conditional early release, and must determine whether, where a conditional early release petition has been filed, the prison administration has taken steps to investigate the possibility of placing the convicted person concerned under the surveillance of the staff of an enterprise or institution, or of an individual. They must make greater use of the practice of assigning to such staffs and individuals, subject to their consent and in accordance with the procedure established by the laws of the Union Republics, responsibilities for the surveillance and re-education of persons granted conditional early release.

If the information provided in the documents submitted to the court is insufficient for its examination of the case, the court shall return the file to the prison administration for completion.

6. The supreme courts of Union and Autonomous Republics and the territorial and regional courts shall exercise greater supervision and control over the activities of the people's courts

in matters relating to conditional early release and shall hear, at meetings of their Presidia, reports by people's judges on the application of the conditional early release procedure, taking practical steps to improve the work of the people's courts and to make judges more aware of their responsibility for the correct disposal of such cases.

RESOLUTION OF THE SECRETARIAT OF THE ALL-UNION CENTRAL COUNCIL OF TRADE UNIONS

Official Record No. 22, section 5, of 27 July 1965 on improving the work of the trade union legal advice bureaux

(*EXTRACT*)

The Secretariat of the All-Union Central Council of Trade Unions notes that the legal advice bureaux of the territorial and regional trade union organizations are extremely active in providing legal assistance to working people.

In 1964, about 600,000 manual and non-manual workers and members of their families applied to such bureaux for legal assistance, and 1,500 trade union members were defended in court.

Legal advice bureaux help to train active trade unionists and members of labour disputes boards and comrades' courts, and to publicize labour legislation among manual and non-manual workers. In 1964 more than 500,000 people attended lectures, interviews and consultations.

Large numbers of active legal workers have been drawn into the work of the bureaux. In each region, voluntary legal advice bureaux which publicize labour legislation and attempt to eliminate violations of labour law at their source and to reduce the number of legal disputes have been organized in large enterprises and at the regional trade union committees. The work of these voluntary legal advice bureaux has produced positive results and is being expanded. More than 1,500 such bureaux have now been established in enterprises and district and regional trade union committees.

Voluntary legal advice bureaux are in active operation in Moscow, the Estonian SSR, Kiev, Kharkov, Chelyabinsk, Sverdlovsk, Saratov, Lovov, Pskov and several other towns.

The Secretariat of the All-Union Central Council of Trade Unions *Resolves:*

1. To instruct trade union councils to take steps to improve the work of the legal advice bureaux in the provision of legal assistance to working people and in helping the active membership of trade unions to deal with legal problems.

Every working person who applies to a legal advice bureau must be provided with comprehensive and expert assistance and, if necessary, defence in court hearings; members of legal advice bureaux must visit enterprises more frequently in order to give assistance to manual and non-manual workers at their actual places of work; they must digest the experience gained in connexion with working people's applications for legal assistance and make proposals for improving the labour laws; more assistance must be given to trade union committees, labour disputes boards and comrades' courts in matters connected with the application of the labour laws.

Members of legal advice bureaux must be employed only on legal work, and must not be diverted from their duties to carry out assignments of a non-legal nature.

2. To recommend the trade union councils to encourage greater public co-operation in the work of providing legal assistance to manual and non-manual workers, and to expand the activities of the voluntary legal advice bureaux in enterprises and give them constant assistance in their work.

3. The attention of trade union councils must be drawn to the need for improving the work of the legal advice bureaux in publicizing labour legislation. Trade union councils should organize more frequent lectures, discussions and question-and-answer evenings for manual and non-manual workers, should make statements in the Press and on radio and television, and should take a greater part in training active trade unionists and members of labour disputes boards and of comrades' courts.

FULFILMENT OF THE STATE PLAN FOR THE NATIONAL ECONOMY OF THE USSR IN 1965

Report of the Central Statistical Board of the Council of Ministers of the USSR

(EXTRACT)

V. Rise in the material and cultural standard of living.

The average annual number of manual and non-manual workers employed in the national economy was 76.9 million, an increase of 3,600,000 over the year. In industry, construction and agriculture, the number of manual workers and of engineering and technical personnel and other specialists rose by 2 million; the number of workers in transport, communications, trade and public catering increased by 600,000; and the number of workers in schools, educational establishments, research institutes and medical and pre-school establishments and in housing and municipal services rose by one million.

In 1965, as in previous years, there was no unemployment in the USSR.

During the year about one million young trained workers graduated from vocational-technical schools. About 14 million persons completed further training and were taught new occupations through individual and group apprenticeship arrangements and training courses at enterprises and collective farms.

At the end of 1964 and in 1965, wages were increased for 20 million workers in service branches of the economy. Workers in education received an average increase of 26 per cent, public health workers 30 per cent, workers in housing and municipal services 15 per cent and workers in trade and public catering 19 per cent.

The minimum wages of manual and non-manual workers were raised in all branches of the economy in which such increases had not already been granted.

A State pension scheme for collective farmers was introduced with effect from the beginning of last year. By the end of the year the number of persons receiving pensions from the central Union collective farm workers' social insurance fund had reached about 8 million.

Total grants and benefits paid out of social consumption funds in the form of social insurance payments, allowances of various kinds, pensions, students' grants, paid holidays, free education and medical care, free or reduced-rate passes to sanatoria and rest homes, upkeep of nurseries, crèches etc., amounted to 41,500 million roubles, or 13 per cent more than 1964.

The average cash wage of all manual and non-manual workers employed in the economy rose from 90 roubles in 1964 to 95 roubles in 1965, an increase of 5.8 per cent. Allowing for payments and benefits received out of social consumption funds, the average wage increased in the same period from 121 roubles to 128 roubles a month.

Individual deposits in savings banks reached 18,700 million roubles by the end of 1965, increasing by 19 per cent over the year.

The volume of State and co-operative retail trade rose from 95,300 million roubles in 1964 to 103,500 million roubles in 1965, an increase of 10 per cent in comparable prices. In addition, sales of goods purchased from collective farmers or received from collective farms for commission sale totalled 1,100 million roubles. The annual retail trade turnover plan was fulfilled ahead of time.

Last year, reductions were made in State retail prices for woollen, silk and linen fabrics, clothing and underwear manufactured from such fabrics and other consumer goods; consumer savings from this price cut amounted to more than 1,200 million roubles over the year.

Collective-farm market prices fell by an average of 6 per cent compared to 1964 prices, and sales increased.

As in previous years, the stability of the amount of money in circulation was ensured by successful development of the national economy and the growth of retail turnover and services.

Further progress was made in public education, science and culture.

In the past year there were 171 million persons receiving education of various kinds; 48 million persons, or 1.6 million more than in 1964, attended general education schools of all types. More than 4 million students completed eight-year courses of education and 1,300,000 completed secondary school education. Enrolment in extended-day schools and classes and in boarding-schools was 3.4 million.

The number of students enrolled at higher and secondary specialized education establishments is 7.5 million; of these, 3.8 million are attending higher educational establishments and 3.7 million secondary specialized schools. One million specialists were added to the national economy in 1965; 400,000 of these had higher education and 600,000 secondary specialized education.

In the past year 1,950,000 students were admitted to higher and secondary specialized education establishments, 850,000 of them to higher educational establishments and 1,100,000 to secondary specialized schools.

The number of scientific workers employed in scientific institutions, higher educational establishments and other organizations amounted to more than 660,000 by the end of the year.

The number of cinemas reached 145,000, an increase of 6,000 over the year. Cinema attendances totalled 4,300 million, an increase of 139 million over 1964.

Housing construction is continuing on a large scale. A total of about 78 million square metres of housing, financed both by the State and by workers and employees from their own funds and with the help of State loans, were brought into occupancy in towns and rural localities—almost 3 million square metres more than in 1964. This included more than 9 million square metres of housing built by housing co-operatives, or 32 per cent more than in the previous year. In addition, more than 350,000 dwellings were built on collective farms (by collective farms, collective farmers and professional workers in rural areas).

Last year alone, more than 10 million persons moved into new apartments and houses or improved their living conditions in existing dwellings.

General education schools with places for 1.8 million pupils, hospitals providing more than 65,000 beds and pre-school establishments with places for 540,000 children were built with State and collective-farm funds.

Extensive work was carried out to extend the gas supply system for houses. During the past year the number of apartments with gas supply rose by 1,600,000, or 19 per cent.

Medical services were improved. The number of physicians of all types rose over the year by almost 25,000. The number of beds in hospitals, sanatoria, rest homes and boarding-houses increased.

UNITED ARAB REPUBLIC

NOTE [1]

In the course of 1965 the following legislation having a bearing on human rights was enacted:

Act No. 24 of 1965 amending some provisions of Act No. 121 of 1947 relating to the renting of premises and the regulation of relations between landlords and tenants (*Official Journal* No. 123 of 6 June 1965).

Act No. 26 of 1965 concerning private agencies active in youth welfare (*Official Journal* No. 126 of 9 June 1965).

Act No. 42 of 1965 on Savings (*Official Journal* No. 159 of 19 July 1965).

Act No. 43 of 1965 on Judicial Authority (*Official Journal* No. 162 of 22 July 1965).

Decision No. 1 of 1965 of the Arab Socialist Union ratifying the Organic Regulations of the Workers' Cultural Organization of the Arab Socialist Union (*Official Journal, "Al Wakaii El Masria"*, No. 56, annex, 22 July 1965).

It should be noted, with reference to Act No. 24 of 1965 amending some provisions of Act No. 121 of 1947 relating to the renting of premises and the regulation of relations between landlords and tenants, that although the Act imposes certain restrictions on the right of landlords to restitution of rented premises it proceeds from imperative social considerations and is aimed at providing suitable lodging for all inhabitants as part of the reorganization of society in the United Arab Republic.

[1] Note based on information furnished by Mr. Mohamed M. Hassan, *Conseiller d'Etat adjoint*, government-appointed correspondent of the *Yearbook on Human Rights*.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE [1]

Article 2 of the Universal Declaration of Human Rights

The Race Relations Act, 1965 deals with two aspects of race relations; that of discrimination on racial grounds and that of incitement to racial hatred.

Section 1 makes it unlawful to practise discrimination on grounds of colour, race, or ethnic or national origins in certain specified places of public resort.

The emphasis of the Act is on persuasion, not punishment, and complaints of discrimination are to be dealt with first by local conciliation committees constituted by a Race Relations Board (Section 2 of the Act). If a committee fails in any attempt at settlement the case is referred to the Race Relations Board who can, if necessary, report the matter to the appropriate Law Officer of the Crown for him to consider whether proceedings for an injunction should be taken in the Civil Courts (Section 3).

Section 5 renders inoperative restrictive covenants forbidding the disposal of leases to people of a particular colour, race, or national origin. This is a matter entirely for the Civil Courts.

Section 6 makes it an offence for a person, with intent to stir up hatred against any section of the public in Great Britain distinguished by colour, race or ethnic or national origins, to publish or distribute written matter which is threatening, abusive or insulting or use in any public place or at any public meeting words which are threatening, abusive or insulting, if in either case the matter or words are likely to stir up hatred against the section of the public concerned on grounds of colour, race or ethnic or national origins. The section is not intended to penalize ordinary discussion or legitimate controversy and it is envisaged that it will be used to deal with organized campaigns of incitement to racial hatred.

Section 7 re-enacts and specifically extends Section 5 of the Public Order Act 1936 to deal with the distribution or display of written matter in a public place or at a public meeting. An offence will now be committed if in a public place a person uses words or behaviour or distributes or displays written matter which is threatening, abusive or insulting and is intended or likely to provoke a breach of the peace.

Article 5 of the Universal Declaration

Murder (Abolition of Death Penalty) Act 1965

The Murder (Abolition of Death Penalty) Act 1965 abolished the death penalty for those classes of murder for which capital punishment had been retained by the Homicide Act 1957. The Act will expire on 31 July 1970 unless Parliament otherwise determines by affirmative resolutions of both Houses.

Under the Act all convicted murderers receive a sentence of life imprisonment. The Home Secretary has power to authorize the release on licence of a life sentence prisoner. The Act provides that a judge, on sentencing a murderer to life imprisonment, may recommend a minimum period of detention and that, before releasing any murderer on licence, the Home Secretary must first consult the Lord Chief Justice and the trial judge, if the latter is still available.

Article 7 of the Universal Declaration

See entry under Article 2.

Article 12 of the Universal Declaration

The Rent Act 1965, extended the area of rent control. It brought in new rights for tenants and landlords, and provided for a new system of fixing rents fair to both. Rents so fixed cannot be raised within three years except in special circumstances.

The Act also made it a criminal offence for anyone to evict a tenant without a court order, or to try to drive him out by threats, violence or any other interference.

Article 14 of the Universal Declaration

Backing of Warrants (Republic of Ireland) Act 1965

This Act makes provision for the return to Ireland of persons who have committed offences against the laws of the Republic and who are in the United Kingdom, the Channel Islands or the Isle of Man. Section 2 (2) provides *inter alia* that a person shall not be returned for an offence

[1] Note furnished by the Government of the United Kingdom of Great Britain and Northern Ireland.

of a political character or an offence under military law only.

Under Section 3 an order for a person's return must not be executed for 15 days without his consent. During this time he may apply for a writ of *habeas corpus*, and once such proceedings have been started he cannot be returned until they have been concluded. Section 6 provides for the release of anyone whose return is unreasonably delayed.

Article 15 (2) of the Universal Declaration

British Nationality Act, 1965

This Act removes a small anomaly in the nationality law of the United Kingdom in its application to married women.

Under the British Nationality Act 1948, if a man who is himself a British subject and a citizen of the United Kingdom and Colonies marries an alien woman, his wife also has the right, if she so wishes, to be registered as a citizen of the United Kingdom and Colonies and a British subject. In other words she has the right to acquire at her own request the same national status as her husband.

There is however a class of people—known in law as "British subjects without citizenship"—who are British subjects but are not citizens of the United Kingdom and Colonies or of any other Commonwealth country. These are people connected with former British India, either by birth, naturalization or ancestry, who have remained British subjects but have not become citizens of the United Kingdom and Colonies or of India or Pakistan. If one of these people married an alien woman, there was formerly no provision under which the wife, in virtue of the marriage, could herself acquire the national status of her husband as a British subject. This Act gives her that right.

There is also another class of person who at the time of the Act of 1948 was passed were British subjects but were also citizens of Eire, or the Republic of Ireland as it is now known. These people were given a right under the Act to claim to remain British subjects, but the exercise of this right did not convert them into citizens of the United Kingdom and Colonies. Their position is therefore similar to that of the "British subjects without citizenship". If one of these people married an alien wife, she had no right to acquire the status of her husband as a British subject. The Act gives the same right to such a woman as to the wife of a "British subject without citizenship", to acquire the status of a British subject.

Article 18 of the Universal Declaration

In the case of *Attorney-General of Ceylon* v. *Reid* [1965] 1 All E.R.812, the Privy Council quashed a conviction for bigamy. The accused had contracted a polygamous marriage after a previous Christian marriage and had subsequently been converted to the Muslim faith which recognizes polygamy. This case exemplifies the importance attached by the courts to a man's right to change his religion.

Article 22 of the Universal Declaration

Social Security

As mentioned in the 1964 Yearbook, all national insurance and industrial injuries standard benefit-rates, including dependants' allowances, were substantially increased by the National Insurance etc., Act 1964 with effect from the last week in January 1965 for short-term benefits, and from the pay-day beginning 29 March 1965 for long-term benefits.[2] To help meet the higher cost of these benefits, flat-rate contributions were increased from 29 March 1965.

This Act also increased from 31 March 1965 the supplementary allowances paid from the Industrial Injuries Fund to certain workers whose disabilities arose from employment before July 1948 when the present national insurance scheme came into force.

Regulations made under the same Act and operative from 29 March 1965 greatly improved the position of certain widows who do not qualify for a permanent pension under the conditions of the post-1948 scheme but who receive a widow's basic pension or a contributory old age pension as a reserved right on insurance under the Contributory Pensions Acts which were in force before 1948. Their 10s. pension was increased to £1 10s. a week.

Also effective from 25 January 1965 was the provision under the 1964 Act which increased from £208 to £260 a year the income limit below which self-employed and non-employed persons may claim exception from liability to pay national insurance contributions.

Following recommendations made by the National Insurance Advisory Committee and the Industrial Injuries Advisory Council respectively, regulations made under both the National Insurance and Industrial Injuries Acts and operative from 19 April 1965 modified the medical certification rules for claiming sickness and industrial injuries benefits. These regulations enable doctors to issue certificates covering up to 13 weeks in advance for patients who have been sick for four weeks and whose illness is likely to be prolonged. Under the old rules such certificates could not be given until an illness had lasted six months. Legislation effecting a further easement of the medical certification rules was introduced in December 1965 but did not come into force until early in 1966.

The National Insurance and Industrial Injuries (Guernsey) Order 1965 which came into force on 24 May 1965 implemented a Social Security Agreement with Guernsey covering unemployment, sickness and industrial injuries benefits. This was an interim agreement which has now been superseded (from April 1966) by a trilateral agreement between the United King-

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[2] See *Yearbook on Human Rights for 1964*, pp. 280 and 281.

dom, Jersey and Guernsey which covers all national insurance and industrial injuries benefits.

Two amendments were made to the Prescribed Diseases Regulations during 1965. An amendment taking effect from 21 June 1965 brought the respiratory complaint known as farmer's lung within the scope of the schedule of prescribed diseases by extending insurance under the National Insurance (Industrial Injuries) Act to this disease in the case of persons insurably employed in occupations involving exposure to the dust of certain mouldy vegetable produce known to cause the disease. A further amendment, effective from 1 November 1965, extended insurance against byssinosis to persons employed in certain rooms in flax mills.

The National Insurance Act 1965 (Commencement Order) brought into effect on 6 September 1965 the Acts consolidating the provisions of the National Insurance, Industrial Injuries, Family Allowances and National Health Service Contributions Acts.

The Committee on the Assessment of Disablement (McCorquodale Committee) relating to the war pensions and industrial injuries schemes, mentioned in the 1964 Yearbook,[3] submitted its Report in December 1965. It was presented to the House of Commons by the Minister of Pensions and National Insurance and published as a Command Paper (Cmnd. 2847). The Report endorsed the general structure of compensation under both schemes and recommended two changes in the schedules of specified injuries. First, that certain very severe amputations should be specifically included at the 100 per cent level at which, in practice, they already receive unscheduled assessments. Secondly, that the assessment of certain leg amputations should be raised. The Committee found no evidence to show that amputation in itself constituted a greater relative burden or handicap than other forms of disablement assessed at the same levels for the purpose of the basic disablement pension, and no grounds for any special provision for amputation either generally or in relation to advancing age. They recommended, however, the introduction of a new allowance for pensioners whose disablement from whatever cause is of such exceptional severity that they are receiving constant attendance allowance at a rate above the normal maximum or would be receiving it but for the fact that they are in hospital. The Minister accepted the Committee's recommendations which were implemented early in 1966.

Following an announcement in Parliament in November 1965, a Bill was introduced to provide earnings-related supplement to flat-rate benefits for the early months of unemployment and sickness and for the first 13 weeks of widowhood, the cost to be met by additional graduated contributions. These changes which are expected to come into force in the autumn of 1966 are regarded as interim developments on which work is continuing as part of the major review of social security schemes announced in Parliament in November 1964.

Between mid-May and mid-June 1965, the Ministry of Pensions and National Insurance co-operated with the National Assistance Board in carrying out an enquiry into the financial and other circumstances of retirement pensioners. The Minister wrote personally to some 11,000 pensioners, selected from central records, to ask for their co-operation in the enquiry, of whom about 9,000 were visited. The detailed information obtained has been analysed in the Ministry and a report is shortly to be published.

Legislative changes similar to those referred to above have been effected in the field of social security in Northern Ireland by parallel legislation made by the Northern Ireland Government.

Article 23 of the Universal Declaration

The Redundancy Payment Act 1965 which came into force on 6 December 1965, requires employers to make lump-sum payments, called "redundancy payments", to employees who are dismissed because of redundancy. It also requires these payments to be made in certain circumstances to employees who have been laid off or kept on short-time for a substantial period. The amount of the payments is to be related to pay, length of service with the employer and to age.

The Act also establishes a Redundancy Fund, financed by contributions collected with the employer's flat-rate National Insurance Contribution. Employers who have to make redundancy payments as required by the Act may claim a rebate of part of the cost (ranging from two-thirds to just over three-quarters) from the Fund.

The Act provides for disputes about entitlement to redundancy payments or about claims for rebate from the Fund to be settled by Industrial Tribunals established under the Industrial Training Act 1964.

Article 25 (1) of the Universal Declaration

The National Health Service (Abolition of Prescription Charges) Regulations 1965: these Regulations were made on 19 January, 1965 and with effect from 1 February, 1965 abolished all charges previously payable in respect of general pharmaceutical services and of drugs, medicines and appliances supplied under the hospital and specialist services. Note: The entries under Article 23 are also relevant to Article 25.

Article 29 of the Universal Declaration

In Northern Ireland the Civil Authorities (Special Powers) Acts (Northern Ireland) 1922-43, and regulations made under them, enable special measures to be taken for the pre-

[3] See *Yearbook on Human Rights for 1964*, pp. 280 and 281.

servation of the peace and the maintenance of order, subject to the condition that the ordinary course of law, the avocations of life and enjoyment of property are interfered with as little as possible.

These special measures include the power to arrest without warrant persons suspected of being engaged in subversive activities, to detain them for questioning and, in certain cases, to intern them. This power has not, however, been invoked since February 1962.

Last year a mention was made of the possibility of a revocation of some of the more stringent powers but, unfortunately due to the danger of subversive activity during the period up to and including the celebrating of the Easter Rising of 1916, it was not found possible to revoke any of these regulations.

UNITED REPUBLIC OF TANZANIA

NOTE [1]

Both the Government and the people of Tanzania attach great importance to the idea of human rights and regard human rights as an essential factor of a free and democratic society. To illustrate this, reference may be made to the Preamble of our Interim Constitution in which this view is clearly brought out: "*Whereas* freedom, justice, fraternity and concord are founded upon the recognition of the rights of all men and of their inherent dignity, and upon the recognition of the rights of all men to protection of life, liberty and property, to freedom of conscience, freedom of expression and freedom of association, to participate in their own government, and to receive a just return for their labours:

And when men are united together in a community it is their duty to respect the rights and dignity of their fellow men, to uphold the laws of the State, and to conduct the affairs of the State so that its resources are preserved, developed and enjoyed for the benefit of its citizens as a whole and so as to prevent the exploitation of one man by another:

And whereas such rights are best maintained and protected and such duties are most equitably disposed in a democratic society where the government is responsible to a freely elected Parliament representative of the People and where the courts of law are free and impartial: ".

It should be noted, however, that the Preamble merely makes reference to the human rights in general terms and in no way purports to set out an exhaustive list of such rights.

However, one of the great problems in relation to human rights in our country is that of having to reconcile these rights with the needs of the country. This has led to the view that in some cases it is necessary to limit or to restrict individual rights in the wider interest of the society as a whole. For instance, there are provisions in our law where the government may take over land from an individual and develop it if that individual is unable to develop it in accordance with the economic development plan of the country. Again there is a Preventive Detention Act which is used in exceptional circumstances, as in case of subversion, when the security of the nation is at stake.

On the question of the enforcement of human rights, Tanzania, unlike many other countries, has rejected the method of guaranteeing human rights by entrenching a Bill of Rights in the Constitution. Various reasons may be given for this, and amongst them, the following may be mentioned:

First, such a method is likely to invite a conflict between the Judiciary on the one hand and Executive and the Legislature on the other, in so far as the Judiciary may have to be called upon to test the validity of the laws passed by Parliament.

Secondly, such a method may limit the powers of the Government to adopt appropriate measures to implement plans designed to secure rapid economic and social progress or to adopt appropriate measures to maintain peace and order in exceptional circumstances, e.g. of subversion when national security is at stake.

Thirdly, and most importantly, by entrenching human rights in the Constitution, it would also be necessary to qualify or limit some of the rights which fact would in effect amount to guaranteeing no rights at all.

Instead, Tanzania relies, for the safeguarding of human rights on three things. First, judicial independence and a firm belief in the principle of the Rule of Law. The prominent position allotted to the judicature in the Interim Constitution is ample evidence of this. Second, the Permanent Commission of Enquiry established under Chapter VI of the Interim Constitution. The purpose of this Commission is to " make an enquiry into the conduct of any persons (in the service of the United Republic, holding office in the Party, the members and persons in the service of a local government authority and the members and persons in the service of such Commissions, corporate bodies established by statute and public authorities or boards) ". The Commission may not, however, enquire into the activities of the President or of the head of the Executive for Zanzibar. Allegations of misconduct or abuse of office or authority are some of the grounds that may prompt an enquiry by the Commission. The results of the enquiry are forwarded to the President for his action. Thirdly, and most importantly, great reliance is put on the good sense of the politicians, the judges and all the people holding responsible positions to play their part in the defence of human rights.

[1] Note furnished by the Government of the United Republic of Tanzania.

Another way in which Tanzania defends human rights is in the field of education. To promote the right of every individual to education, discrimination in all places of learning is strictly prohibited.

Though Tanzania is by law of the Constitution a One-Party State, it is still very democratic. For one thing the set-up is a direct result of the will of the people. For another, serious steps were taken lest the working of a one-party system in our country should prejudice the rights of the individual, especially his right to participate in politics. A Presidential Commission, consisting of persons from all sections of society, was entrusted with the task of finding out how a One-Party State could still be democratic. Its recommendations were adopted by the Government almost without change. The last General Elections were held in accordance with these recommendations and they (the elections) have been regarded as having been free by many prominent persons in the world. The Constitution of Tanzania is also such that freedom of speech can always be guaranteed.

Finally, Tanzania is giving careful thought to the proposed African Convention on Human Rights, an instrument for enforcing human rights on a regional basis.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN 1965

Landmark Actions by Federal, State, and other Governmental Authorities

(Compiled by the Department of State in collaboration with other interested Departments and Agencies of the Federal Government) [1]

INTRODUCTION

Human rights and fundamental freedoms are assured the people of the United States through constitutional and legislative provisions of both the United States (i.e. Federal) Constitution and the Constitutions of the various States. Primary responsibility for public order rests with local authorities. However, the Federal Government co-operates with the States, through legislation, financial assistance and otherwise, for the protection and realization of human rights in all fields, including the economic and social welfare fields. The following survey for 1965 is necessarily selective and is confined to legislation and other acts on the federal level of long-term significance.

As in previous years, the people of the United States celebrated the anniversaries of the Universal Declaration of Human Rights on 10 December and the US Bill of Rights, 15 December, by the designation of 10-17 December as Human Rights Week. In a Proclamation President Johnson called upon the people of the United States to observe these anniversaries, pointing out that "people everywhere in the world find common cause in the demand for more effective recognition—in law and in practice—of the inalienable right of every person to equal dignity and equal opportunity". State Governors and Mayors in many cities also proclaimed Human Rights Week and encouraged official groups, schools, civic and other private organizations to join in study of local problems and action to fulfill the objectives of the Universal Declaration and the United States Bill of Rights.

In response to the United Nations designation of 1965 as International Co-operation Year, the President appointed thirty citizen committees to study various fields of action. In a White House Conference convened in anticipation of Human Rights Week, the Committees on Human Rights and on the Status of Women both urged support for stronger international institutions to aid human rights efforts, wider participation by the academic community and non-governmental organizations in world-wide research and action programmes and advance planning for the 1968 International Human Rights Year.

The year 1965 will be remembered particularly as the year that the right to vote became a reality for thousands of American citizens. At the end of December, 1965, less than five months after President Johnson signed the Voting Rights Act of 1965, almost a quarter of a million new Negro voters had been enrolled in States of the South where before their rights had been most stubbornly resisted.

In 1965, discriminatory barriers also fell in the fields of education, public accommodation and employment, under the first full year of enforcement of the Civil Rights Act of 1964. Title VI of that Act requires that all programs receiving Federal financial assistance must be operated on a nondiscriminatory basis. Largely in response to the Office of Education use of this rule, the percentage of Negro children attending school in classrooms with white children increased to four times the 1964 rate.

In addition, the 1964 Act gave the Department of Justice new power to take a direct part in the school desegregation suits where suits were still necessary. During 1965, the Department participated in 25 suits, seven original school suits in response to parents' complaints and 18 interventions in cases already filed by private litigants.

Two of the most important decisions of the United States Supreme Court during 1965 were *Louisiana* v. *United States,* 380 U.S. 145 and *United States* v. *Mississippi,* 380 U.S. 128. In the Louisiana case, the Court sustained the decision of a three-judge district court, holding unconstitutional the provisions of Louisiana law requiring applicants for voter registration to read and interpret any section of the Federal or State Constitutions and enjoining the use of a multiple choice "citizenship" test in 21 counties.

In *United States* v. *Mississippi,* as in the Louisiana case, the government has also challenged the constitutionality of certain provisions of the Mississippi constitution and voting laws. The district court dismissed the case, on several grounds, among them that the Civil Rights Act of 1957 [42 U.S.C. 1971 (*a*) (*c*)] does not authorize the United States to challenge the validity of discriminatory State laws. The Supreme

[1] Information furnished by the Government of the United States of America.

Court held all grounds for dismissal invalid. It ruled that the Civil Rights Acts clearly authorized such a suit against a State based on discriminatory voting laws and that it was error to dismiss the case without a trial. The Court held that the allegations of the complaint alleging "a common purpose running through the State's legal and administrative history... to adopt whatever expediency necessary to establish white political supremacy..." are sufficient to justify relief, and reversed and remanded the case for trial. Thereupon, in June 1965, Mississippi revised its voter registration requirements and eliminated the discriminatory provisions attacked in the suit.

Landmark Legislation

Voting Rights

The Fifteenth Amendment of the United States Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude". Under Section 2 of this Amendment Congress is empowered to enforce the Amendment by appropriate legislation. Recent "appropriate" legislation has included the Civil Rights Acts of 1957, 1960, and 1964 which provided for safeguards in the event of racial discrimination in the voting process. Congress enacted and the President signed on 6 August 1965, the most comprehensive legislation yet passed to promote the purpose of the Fifteenth Amendment. The Voting Rights Act of 1965, containing 19 Sections, generally:

(1) provides for the suspension of the use of literacy and other "tests and devices" in certain States and political subdivisions where there is reason to believe (and the Attorney General so finds) that such tests and devices have been and are being used to deny the right to vote on account of race or colour;

(2) authorizes the appointment of Federal examiners in such States or political subdivisions to register persons who are qualified under State law, except insofar as such law is suspended by this Act, to vote in State and local elections;

(3) empowers the Federal courts, in any action instituted by the Attorney General to enforce the guarantees of the Fifteenth Amendment, to authorize the appointment of Federal examiners, pending final determination of the suit or after a final judgement in which the Court finds that violations of the Fifteenth Amendment have occurred;

(4) sets forth criminal penalties for intimidating, threatening, or coercing any person who votes or attempts to vote or any person who helps or urges another person to vote or attempt to vote.

In Section 10 of the Act Congress found that the enforcement of the payment of poll taxes in State and local elections in some areas abridged the right to vote contrary to the Fourteenth and Fifteenth Amendments. The Attorney General is thus authorized to institute actions for declaratory judgement or injunctive relief against enforcement of a discriminatory poll tax as a precondition to vote.

Anti-Poverty Measures

The Appalachian Regional Development Act of 1965 continued efforts to wipe out "pockets of poverty" by establishing development programmes for a mountainous area extending into eleven different States, which had become economically depressed because of changes in the mining industry. The Act provides immediate aid for the construction of highways and local access roads, the development of demonstration health facilities including hospitals and treatment centres, land conservation and erosion control, timber development, rehabilitation of promising mining areas, and improved use of water resources. In addition, the Act provides funds to supplement and expand various programmes already in operation in the region. An Appalachian Regional Commission serves as focal point for direction and co-ordination. In addition to planning and research, the Commission will act to stimulate local co-operation and private investment, looking toward long-term solutions of the region's economic problems.

Provisions under the Economic Opportunity Act of 1964 were extended and expanded in 1965, particularly to encourage new projects in rural areas, supply basic education, and meet the needs of persons with long records of unemployment or low earning power.

Education

In the United States, public schools have always been a local responsibility, usually administered by a school board elected or appointed in the area. The Elementary and Secondary Education Act of 1965 was, therefore, historic in providing Federal funds—more than a billion dollars in the first year alone—for a comprehensive programme of Federal assistance to local educational agencies. The aim is to meet special needs, especially those in low-income areas where resources may have been limited. In every case State and/or local authorities are free to determine whether and how to make use of available grants, and are responsible for their expenditure and administration for the specified objectives. The Act prohibits Federal control over education and payments for religious worship or instruction.

The Federal Congress also enacted the Higher Education Act of 1965. This law authorizes grants to improve academic resources including acquisition of laboratory equipment and purchasing of books for college libraries. Programmes for the construction of colleges were expanded. The Act establishes a National Teacher's Corps to aid schools in low-income areas and provides assistance for education programmes to assist communities in solving urban or suburban problems. The law is in line with previous legislation through which the Federal Govern-

ment had promoted the development of universities and colleges under conditions assuring their independence and academic freedom.

Medical Care for the Aged

On 30 July 1965, President Johnson signed the historic Health Insurance for the Aged Act, which amended the original Social Security Act of 1935. This programme of health insurance for the aged, often called "medicare", introduced protection against the cost of illness for millions of older Americans for the first time under the national programme of social insurance.

Title 1 and Part A of Title 18 established a compulsory monthly hospital insurance benefits programme. This provides for the payment of the cost of in-patient hospital services, post-hospital extended care services, post-hospital home health services, and out-patient diagnostic services for social security and railroad retirement beneficiaries when they reach age 65. These benefits, except for services in extended care facilities (effective 1 January 1967) became effective on 1 July 1966.

Part B of Title 18 provides for a voluntary plan offering to pay the cost of physicians' services and other supplementary services upon payment of a $3 monthly premium by those who elect to enroll. This will be effective 1 January 1967.

Housing and Urban Development

The Federal Government created a new Department of Housing and Urban Development. In addition to providing more effective administration for the various housing and urban renewal programmes already established, the new agency will undertake broad planning and research on the problems of cities, in which an increasing proportion of the population now live. The Housing and Development Act. of 1965 continues the many programmes and financing services of previous years, including public housing for low-income families. To improve urban areas the Act provides basic assistance for sewer and water systems, the creation of neighbourhood facilities such as health stations, youth and community centres, and acquisition of land for public parks, open space conservation and other public use under comprehensive local plans.

Immigration

Legislation amending the Immigration and Nationality Act introduces a selection system for immigrants based on a series of preferences to replace the national origins quota system previously in effect for other than Western Hemisphere countries. Primary preferences are given to family members of citizens and other permanent residents in the United States. Remaining preferences are for applicants with professional skills, exceptional abilities in the sciences and arts or in skilled and unskilled occupations which are in short supply. A labour clearance procedure is required for the latter applicants to ensure that their employment will not affect adversely the employment opportunities and work conditions of United States workers. The Act provides for a transitional period with the new system coming into full effect in 1968. Applicants are considered on a "first-come, first-served" basis without regard to birthplace or nationality. An annual numerical ceiling totalling 170,000 entrants is placed on all former quota countries with no more than 20,000 per year from any one country. For the Western Hemisphere there is no numerical limitation at the present time but the legislation provides for a limitation of 120,000 starting in 1968 unless changed in the interim.

Culture and the Arts

A National Foundation on the Arts and Humanities was established by Act of Congress in 1965 with the object of promoting progress and scholarship throughout the United States. The Foundation is composed of separate endowments for the arts and for the humanities, with a Federal Council to consult on programmes and provide co-ordination with the activities of other government agencies. The Endowment for the Arts is authorized to carry out a programme of grants-in-aid to the States, almost all of which already have similar Councils, and also to non-profit or public groups and to individuals engaged in the creative and performing arts. The Endowment for the Humanities provides grants and loans for research, awards fellowships and grants to institutions for training, supports the publication of scholarly works, provides for the interchange of information, and fosters understanding and appreciation of the humanities. Early plans developed by the Foundation include efforts to expand access to cultural achievements in other countries.

Other Actions

Fair Trial and Hearing (Articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights)

The Fifth Amendment of the United States Constitution provides that "...nor shall (any person) be compelled in any criminal proceeding to be a witness against himself...". In 1964 the United States Supreme Court held that the privilege against self-incrimination of the Fifth Amendment applied to the States by virtue of the Fourteenth Amendment [*Malloy* v. *Hogan*, 378 U.S. 1 (1964)].

In *Griffin* v. *California*, 380 U.S. 609, the Supreme Court held that comment by the prosecutor in a state criminal trial upon a defendant's failure to testify or court instructions that such failure was evidence of guilt was contrary to the compulsory self-incrimination clause as applied to the States. The Court further stated that such comment was a remnant of the "inquisitorial system of criminal justice" which the Fifth Amendment outlawed.

The Sixth Amendment of the United States Constitution provides that "(i)n all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him...". In *Pointer* v. *Texas,* 380 U.S. 400, the Supreme Court held that the above Sixth Amendment right of the accused to cross-examine the witnesses against him, was fundamental and essential to a fair trial and was thus guaranteed to persons accused of State as well as Federal crimes by the Fourteenth Amendment due process clause. Such a right must be determined by the "same standards whether the right is denied in State or Federal courts". The Court found that the use of a transcript of a complaining witness's testimony at a preliminary hearing where defendant was unrepresented by counsel and was thus unable to effectively cross-examine the witness was a denial of defendant's confrontation right under the Fourteenth Amendment.

The Supreme Court in *Mapp* v. *Ohio,* 367, U.S. 643 (1961) found that evidence seized in violation of the search and seizure clause of the Fourth Amendment of the United States Constitution was inadmissible in State criminal trials under the Fourteenth Amendment due process clause.

Equal Protection of the Law and the Right to Vote (Articles 7 and 21)

The Supreme Court in *Carrington* v. *Rash,* 380 U.S. 89, held that while a State can impose reasonable residence requirements for voting, it cannot under the equal protection clause of the Fourteenth Amendment deny the ballot to a *bona fide* resident merely because he is a member of the United States Armed Forces. The petitioner who had been in the Army for almost twenty years had moved to Texas in 1962. The State conceded he was domiciled in Texas. He was refused the right to vote because of a provision of the Texas Constitution prohibiting any member of the United States Armed Forces who moves his home to Texas during the course of his military duty from ever voting in any election in that State so long as he or she is in service.

The Court invalidated this provision and concluded:

> "(T)he uniform of our country ...(must not be the badge of disenfranchisement for the man or woman who wears it." [380 U.S. 89, at 97 (1965)]

Freedom of Movement (Article 13)

Prior to 1961 no passport was required for United States citizens to travel anywhere in the Western Hemisphere. In January 1962, the United States broke diplomatic relations with Cuba and the Department of State eliminated Cuba from the area for which a passport was not required. Louis Zemel twice applied to the State Department to have his passport validated for travel to Cuba "to satisfy (his) curiosity about the state of affairs in Cuba and to make (him) an informed citizen". He was denied both times.

In *Zemel* v. *Rusk,* 381 U.S. 1, the Supreme Court held that the Passport Act of 1926 amply authorized the Secretary of State to refuse to validate passports of United States citizens for travel to Cuba.

In 1958 the Court had held in *Kent* v. *Dulles,* 357 U.S. 116, that the right to travel was a part of the "liberty" of which a citizen cannot be deprived without due process of law under the Fifth Amendment. The *Zemel* Court believed that the requirements of due process were a function not only of the extent of the governmental restriction imposed but also of the extent of the necessity for the restriction. The Court found that the Secretary's refusal was justified by the weightiest foreign policy and national security considerations which affected all citizens. The failure to validate the passport inhibited action but did not restrict a First Amendment right. The Court concluded that "the right to speak and publish does not carry with it the unrestrained right to gather information".

Right of Privacy; Marital Rights (Articles 12 and 16)

Previous Supreme Court decisions have suggested that the various guarantees of the Bill of Rights have "penumbras" formed by emanations from those rights that help give them life and substance.

In the State of Connecticut the executive director and the medical director of the Connecticut Planned Parenthood League were convicted and fined as accessories for advising other persons to violate the State Birth Control Law by giving information, instructions, and medical advice to married persons about means of preventing conception.

In *Griswold* v. *Connecticut,* 381 U.S. 479, the Supreme Court held that the Connecticut statute making it a crime for any person to use any drug or article to prevent conception violates the right of marital privacy which was within the "penumbra" of several specific guarantees of the Bill of Rights. This zone of privacy was derived especially from the rights set forth in the First, Third, Fourth, Fifth, and Ninth Amendments. The marriage relationship comes within the protected zone of privacy. The Connecticut law forbade the use of contraceptives rather than regulated their manufacture and thus had a maximum destructive impact on the marital relationship.

Freedom of Religion (Article 18)

Section 6(j) of the Universal Military Training and Service Act [50 U.S.C. App. Section 456 (j)] exempts from combatant training and service in the United States Armed Forces those persons who by reason of their religious training and belief are conscientiously opposed to participating in war in any form. The nation's Highest Court in *United States* v. *Seeger,* 380 U.S. 163, considered and rejected constitutional attacks under the First Amendment freedom of religion clause of the statutory definition of the terms "religious training and belief". The statute defined these terms as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human rela-

tion, but does not include essentially political, sociological, and philosophical views or a merely personal moral code". In this case the Court faced the question of whether the term "Supreme Being" was equivalent to or broader than "God". The Court considered many of the modern definitional concepts of terms such as "God" and "religion".

The Court held that Congress used the expression "Supreme Being" rather than "God" to clarify the meaning of "religious training and belief" so as to embrace *all* religions and to exclude essentially political, sociological, and philosophical views. The Court concluded that:

> "... the test of belief 'in a relation to a Supreme Being' is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders we cannot say that one is 'in a relation to a Supreme Being' and the other is not." [380 U.S. 163, at 165-166 (1965).]

The Court while rejecting the constitutional attacks found that the beliefs of the three conscientious objectors involved in the suit came within criteria of the test of a belief in a Supreme Being.

Freedom of Thought and Belief (Article 18)

The Supreme Court in *Communist Party of the United States* v. *Subversive Activities Control Board,* 367 U.S. 1 (1961), sustained an order of the Board requiring the Party to register with the Attorney General under the Subversive Activities Control Act of 1950. The Party refused to comply. Thus no list of members, as required by the Act, was filed. Under such situation each member was required to register and file a registration statement with the Attorney General. As a result of the Attorney General's action under the Act certain alleged members of the Party were found to be Party members by the Board and ordered to register.

The Supreme Court in *Albertson* v. *Subversive Activities Control Board,* 382 U.S. 70, held that the requirement of filing a registration form (IS-52a) and of completing and filing a registration statement is incriminatory within the Fifth Amendment self-incrimination clause because the admission of Party membership and other information might be used as evidence in or investigatory leads to a criminal prosecution.

Neither the immunity provisions of the Act nor a previous finding of Party membership by the Board prevents such use.

An immunity statute, to supplant the self-incrimination privilege, must provide complete protection from all perils against which the constitutional prohibition is designed to guard. Futhermore, the right to invoke the privilege must not depend on an assessment of the information (i.e., as to Party membership) in the Government's possession.

Freedom of Expression (Article 19)

A Maryland movie exhibitor was convicted of exhibiting a film without first submitting it to the State Board of Censors as required by Section 2 of the Maryland Motion Picture Censorship law.

The Court in *Freedman* v. *Maryland,* 380 U.S. 51, found the Maryland statute: (1) put the burden on the exhibitor of instituting judicial proceedings to overturn a censor's disapproval and to persuade the Court the film is protected expression; (2) prohibited exhibition pending judicial review; (3) failed to afford assurance of prompt judicial review.

The Court suggested the following criteria for the administration of a censorship system for motion pictures. The censor must have the burden of showing the film is unprotected expression. Any restraint before judicial review must be limited to preservation of the *status quo* and for the shortest period compatible with sound judicial procedure. Prompt final judicial determination of obscenity must be assured.

A requirement of prior submission of motion pictures to a censorship board is not necessarily unconstitutional. The Supreme Court, however, held that the Maryland statute lacked adequate procedural safeguards against undue inhibition of protected expression and thus the statutory requirement of prior submission to censorship constituted an invalid prior restraint under the Fourteenth Amendment due process clause.

VENEZUELA

NOTE [1]

(1) The rules governing the protection of the liberty of the individual through the *habeas corpus* procedure have been briefly stated in the Fifth Transitional Provision of the Constitution.[2] Article 49 of the Constitution in turn provides for a *ley de amparo* which protects "every inhabitant of the Republic in the enjoyment and exercise of the rights and guarantees established in this Constitution".

Since a *ley de amparo* to safeguard the enjoyment and exercise of constitutional rights and guarantees is a new institution, the preparation of such a law involves a careful study of various legal and political factors.

We have thought it appropriate to enact from time to time partial laws protecting human rights and to assimilate gradually the experience gained from the application of their provisions. That is why the Ministry of Justice has drawn up a *habeas corpus* bill to protect the right to liberty and security of person, which is one of the fundamental human rights, and one which should form the basis of any democratic system. Furthermore, liberty of person should be one of our primary concerns.

The central aim of the entire bill is to establish a summary procedure designed to reduce the period of arbitrary detention to a minimum. Under this procedure judges cannot be challenged or prevented from proceeding with a case and cases can be heard on any day of the year and at any hour of the day or night. The only exceptions are Sundays, the first of January, Maundy Thursday and Good Friday, the first of May, the twenty-fifth of December, and the days included in the National Holidays Act; but a judge may sit on these days if he considers that the case is urgent.

Under the bill, the aggrieved person or any other person acting on his behalf, may apply for a writ of *habeas corpus*. A genuine popular action is thus created. In addition, minors are permitted to apply for a writ of *habeas corpus* when their legal representative is absent or is prevented from doing so. The legal capacity of an aggrieved person does not prevent any other person from acting on his behalf.

As to the question of competence to hear an application for a writ of *habeas corpus, the* Ministry took two systems into account: (*a*) that adopted in the Fifth Transitional Provision of the Constitution,[3] which confers this competence on the judge of the criminal court of first instance who has jurisdiction at the place where the act which caused the application was carried out or where the aggrieved person is to be found; and (*b*) that adopted in the bill, which empowers various courts to hear the application.

The system adopted in the Fifth Transitional Provision is certainly the simplest and it eliminates any conflicts of competence that might arise between judges. However, two fundamental reasons prompted the drafter of the bill to adopt the other system. First, this procedure is authorized under the Fifth Transitional Provision itself, which is a temporary measure. Secondly, the aim of vesting in the Political and Administrative Chamber of the Supreme Court of Justice competence to hear the application for a writ of *habeas corpus* against acts involving the deprivation of liberty by a country's highest authorities is to avoid the political pressures to which the judge of a lower court sitting alone may be subjected. Thirdly, the *habeas corpus* procedure is facilitated when the judges of districts or Departments are given competence to hear complaints against State or municipal officials.

Furthermore, the system adopted in the Fifth Transitional Provision may lead to an undesirable situation in which a judge of first instance has to examine a decision by a higher court or tribunal involving deprivation of liberty.

As to possible conflicts of competence between different judges, the bill seeks to reduce them to a minimum by granting the next highest court the right to decide, within twenty-four hours, which is the competent court. Any judge who raises a question of competence that is clearly unfounded is liable to a fine of not less than 1,000 bolivars and not more than 10,000 bolivars. A judge who fails to transmit the records of a case involving a question of competence in due time is liable to the same fine.

Title V of the bill establishes ten cases in which no application can be made for a writ of *habeas*

[1] Note furnished by the Government of Venezuela.

[2] For extracts from the Constitution, see *Yearbook on Human Rights for 1961*, pp. 390-398.

[3] See *Yearbook on Human Rights for 1961*, p. 398.

corpus. The object of this title is to solve some practical problems which have arisen in connexion with the application of the Fifth Transitional Provision. Our courts have declared contrary to law any application for a writ of *habeas corpus* against government orders issued under the decree proclaiming the suspension of guarantees; on the other hand, however, the courts have ordered the release of persons held under the provisions of the Vagabonds and Rogues Act.

The detailed classification of cases in which application for a writ of *habeas corpus* cannot be made will certainly fill a gap in the Fifth Transitional Provision and will preclude legal arguments about whether or not an aggrieved person is legally entitled to apply for a writ of *habeas corpus*.

The *habeas corpus* procedure follows the main lines laid down in the Fifth Transitional Provision. Attention must be drawn, however, to certain measures designed to expedite the procedure and to ensure the execution of judicial decisions.

When the official who has been accused does not reside in the town in which the competent court is situated, the judge may request the report by telegraph, in which case the delivery receipt serves as notification.

All penitentiaries, prisons, fortresses, police stations, penal colonies, detention centres and other places of imprisonment are ordered to maintain registers, under the responsibility of the head of the institution concerned, so that the identity of the accused officials and detained persons may be known. If a detained person has not been registered, it is assumed that the deprivation of liberty was unwarranted.

Provision is made for detaining the official to whom the writ is addressed and who has been duly notified of it if he does not produce the aggrieved person or give the reasons for his detention.

It has been deemed appropriate to make judges responsible for forwarding a copy of the sentence to the legal officers of the *Ministerio Público* so that penal proceedings may be brought against the official who has committed a criminal offence. In this way, one of the purposes of the *Ministerio Público* is achieved, namely, that of ensuring the observance of constitutional forms. In this connexion, provision is made for the aggrieved person to lodge a complaint when the judge fails to act on the application for a writ of *habeas corpus* or does not issue the writ within the time limit laid down by law, when he fails to issue the orders necessary for carrying out the judgements, or when there is a violation of any provision of the law.

The bill incorporated the rule contained in the Fifth Transitional Provision of the Venezuelan Constitution, which allows the judge to make the issue of the writ of *habeas corpus* conditional upon the deposit of security by the aggrieved person or upon his remaining in the country for a period which may not exceed thirty days.

It was deemed appropriate to include this constitutional provision because, while it is true that the *habeas corpus* procedure is designed to protect the personal liberty of the honest citizen who is a victim of arbitrary measures depriving him of his liberty, it is impossible to prevent situations in which persons involved in the investigation of punishable acts who are detained as a result of the initial action taken by the authorities designated by law to undertake the preliminary proceedings (*sumario*) may apply for a writ of *habeas corpus*, claiming that they have been illegally deprived of liberty on the ground that no warrant for their arrest had been issued; in the majority of cases, however, such a warrant had not been issued because the lengthy technical investigations could not be concluded within the time limit laid down in the Constitution and the Code of Criminal Procedure, that is to say, in time to enable the competent judge to rule on the detention of the suspected person. In practice, the result of this constitutional provision has been that the persons involved have been obliged to remain in the country until the preliminary investigations were concluded either because they were prohibited from leaving or because they had to provide bail in the form of immovable or movable property as a guarantee that they would remain.

Consideration was given to the advisability of limiting the discretionary power of the judge, but in order to do so it would be necessary to introduce hair-splitting provisions which would be out of place in a law concerning *habeas corpus*. It was decided that the judge's discretion should be sufficient guarantee that the writ would not be issued to the detriment of justice, and that he might require bail to be provided in the form of immovable or movable property or prohibit the aggrieved person from leaving the country when the nature of the act which gave rise to the deprivation of liberty made it desirable or when the past history of the accused showed him to be dangerous. It was also decided that the judge might set the bail at whatever amount he considered appropriate to ensure that the person would remain within the jurisdiction of the court that was hearing or was to hear the case. In applying this provision, judges have usually preferred to prohibit the aggrieved person from leaving the country for a reasonable period, not exceeding thirty days; while not violating the right to liberty of person, this system ensures society's right to apply when necessary the legal sanctions prescribed by law for anti-social offences.

The bill also includes a provision which allows judges to order the release on bail of accused persons who have been detained for a period equal to or greater than the term of imprisonment that the Public Prosecutor has asked for in the indictment.

(2) With regard to article 27, which states that everyone has the right freely to participate in the cultural life of the community, the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author, attention should be given to the Copyright Act which came into force upon its publication in

Gaceta Oficial No. 823, of 3 January 1963. The fundamental innovation of this Act was that it was aligned with the principles laid down in the most important international agreements on this subject, which enabled Venezuela to accede to the Inter-American Convention signed in Washington in 1946, the Geneva Universal Copyright Convention of 1952 and the Berne Convention, and thus to guarantee the protection abroad of the rights of Venezuelan authors.

(3) As to article 25 of the Universal Declaration of Human Rights, which states that everyone has the right to security in the event of unemployment, sickness, disability, old age or other lack of livelihood in circumstances beyond his control, a Social Security Bill introduced in the Venezuelan Congress in 1955 to regulate the compulsory social security scheme in cases involving sickness, accident, maternity, disability, old age, survivors, and unemployment. This Bill became law upon its publication in *Gaceta Oficial* No. 1,023, extraordinary, of 11 July 1966.

(4) In judicial matters, the judgement delivered by the Supreme Court of Justice on 4 March 1965 and published in *Gaceta Oficial* No. 27,699, of 25 May 1965, declared the provision of article 970 of the Commercial Code prohibiting women from being receivers in bankruptcy cases to be unconstitutional and therefore null and void.

That part of article 970 of the Commercial Code was declared null and void on the ground that it was contrary, *inter alia,* to Article 61 of the Constitution, which prohibits discrimination based on race, sex, creed or social condition. The operative part of the judgement reads as follows: " On the basis of the foregoing consideration, this Supreme Court of Justice, sitting in plenary session and administering justice in the name of the Republic and by authority of the Law, declares article 970 of the Commercial Code to be unconstitutional and therefore null and void in so far as it prohibits women from being receivers in bankruptcy proceedings, that is to say, it declares that the part of this article which states that women cannot be receivers, even when they are engaged in business, is without value or effect. "

YUGOSLAVIA

DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS IN THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA IN 1965

NOTE [1]

Developments in the field of human rights in the Socialist Federal Republic of Yugoslavia in 1965 were characterized by the passing of an important number of laws with the aim of making the existing laws conform to the new 1963 Constitution. At the same time, various provisions contained in different laws and regulations were codified. In some of the laws, passed in 1965, the changes consisted only in the adapting of determined subjects to the new organization of government and to the principles of the Constitution. On the other hand, some laws embody the changes and the broadening tendency of human rights so that we shall deal only with them in this survey.

I — POLITICAL RIGHTS

1. *Law on the Register of Voters (Official Gazette of the SFRY,* No. 5/1965)

Based on the Constitution, the electoral system in Yugoslavia is uniform. It covers the system of election of members of socio-political communities and that of workers councils as well as other bodies of management in work organizations and state organs. This Law was passed with a view to putting the uniform electoral right on record and thus enabling the citizens to make use of it.

Different from previous regulations, this Law simplifies the method of keeping registers of voters. Furthermore, whereas, according to previous regulations, it was the duty of the citizens themselves to have their names entered into the register of voters at the time of their coming of age or change of residence, the new Law prescribes that all the data relating to the right to vote be forwarded to the person in charge of registers of voters. Thus, for instance, the registrar is under obligation to forward data on persons who have come of age—eighteen—while the service for registering the arrival of citizens in and their departure from the territory where the register of voters is kept and the court handling municipal law forward decisions pertaining to legal ability. However, this does not restrict the right of citizens to forward the necessary data personally. The transfer of obligation with respect to the keeping of registers of voters from citizens to official bodies and persons ensures a higher degree of accuracy of the registers of voters and makes it easier for the citizens to make use of their right to vote.

II — PERSONAL STATUS

1. *Law on Surname (Official Gazette of the SFRY,* No. 8/65)

The Law has introduced some new elements with regard to surnames. Whereas previously spouses could agree that their common surname should be the husband's, according to the new law they can agree that the surname of either of the spouses be their common surname. Furthermore, as has been the case until now, each of them is entitled to retain his or her surname or add to his or her surname that of the other spouse.

Respecting the principle of foreign sovereignty, the new Law stipulates that a foreign national in Yugoslavia should use the name and surname he has obtained on the basis of the law of the country whose citizen he is while his children, born in Yugoslavia, also take their name and surname according to the national law of their parents. However, the new Law entitles foreign nationals, who have contracted marriage with a Yugoslav citizen, to make use with respect to the choice of surname of the right provided for Yugoslav citizens.

The procedure of changing surnames has been simplified and abridged. For changing a child's surname, the former Law required that the consent of the child should be obtained if the child was over 14. According to the new Law, the child's consent is required if the child has reached the age of ten.

The new Law entitles persons to have a surname and name consisting of several words.

2. *Law on Identity Card (Official Gazette of the SFRY,* No. 8/65)

Until at present, an identity card served exclusively as a document for determining the identity of a person. According to the new Law, it

[1] Note prepared by Dr. Boško Jakovljević, government-appointed correspondent of the *Yearbook on Human Rights.*

also serves as a proof of Yugoslav citizenship and of facts relating to birth.

3. *Law on Registries* (*Official Gazette of the SFRY*, No. 8/65)

The Law introduces somes changes protecting the reputation of persons with whom the data are concerned and facilitates the rectification of facts which have been incorrectly registered. Thus, an interested person has the right to look into the registers. This, however, shall be denied if the person concerned is rightly suspected of having no justified interest in the matter. The right to look into the documents and decisions, on the basis of which entries into the registers have been made, will be permitted to the person whom such data concern or to his dependants or adoptive parents or guardians and to any other person, but only if such a person has a direct and legally justified interest in the matter.

Into the registers are also entered data concerning changes of citizenship. This enables citizens to prove their citizenship on the basis of registers.

The new Law ensures that the facts incorrectly entered into the registers be ascertained through administrative proceedings.

III — FREEDOM OF MOVEMENT

1. *Basic Law on the Registry of Place of Residence and Living of Citizens* (*Official Gazette of the SFRY*, No. 8/65)

In conformity with this Law, citizens are under obligation to report their place of residence only if they take lodging in hotels and other organizations, whereas previously they had to report whenever their stay lasted longer than 24 hours, no matter where they took lodging.

2. *Law on Travel Documents for Yugoslav Citizens* (*Official Gazette of the SFRY*, No. 12/65)

Proceeding from Article 13 of the Universal Declaration of Human Rights on the Right to Leave and to Return to the Country, the Law determines and regulates the manner of implementing the right of Yugoslav citizens to obtain travel documents and visas. In comparison with earlier regulations, the procedure for the obtaining thereof has been simplified.

3. *Law on Crossing of State Border and Travel in Border Area* (*Official Gazette of the SFRY*, No. 13/65)

The Law has abolished the frontier zone, which used to embrace a 15 km. belt along the border. In this manner the system of restriction of travel and work in this zone has been abolished. Now every person, either a Yugoslav or a foreign national, may attend to his business and travel in this zone. Actually, travel may be limited or prohibited only in some determined sectors of the border region, to a depth of 10 kilometres, on the basis of special regulations.

Movement within the zone extending 100 metres from the border into the national territory has been facilitated. The required permits are issued by municipal authorities.

4. *Law on Travel and Stay of Foreign Nationals in Yugoslavia* (*Official Gazette of the SFRY*, No. 43/65)

The Law determines the right of foreign nationals to enter, stay in and freely depart from Yugoslavia. The question of issuing visas for travel as well as transit and of permits for temporary stay or permanent residence or for stay on the basis of tourist passes, etc., has been regulated by the Law in a manner by which the procedure has been facilitated and the rights of foreign nationals in this respect have been extended.

In conformity with Article 65 of the Constitution, foreign nationals and stateless persons persecuted because of their struggle for democratic views and movements, for social and national liberation, for freedom and human rights, or for the freedom of scientific and artistic creation, enjoy the right of asylum in Yugoslavia. Foreign nationals and stateless persons, enjoying the status of refugees on the basis of the fact that they are persecuted because of their progressive political aspirations and belonging to a determined nationality, race or creed, are entitled to protection, accommodation and indispensable material aid in Yugoslavia.

The travel of foreign nationals has been further facilitated by the agreements concluded with a number of countries on the mutual abolition of visas. In 1965, such agreements were concluded with Algeria, Tunisia, and Bulgaria. Similar agreements had been concluded, in 1963 and 1964, with a number of other countries (Sweden, Norway, Finland, Denmark, Iceland, Poland, Czechloslovakia, Romania, Morocco, Tanzania).

IV — ASSOCIATION, MEETINGS

1. *Basic Law on the Association of Citizens* (*Official Gazette of the SFRY*, No. 16/65)

Whereas previous regulations required that the founding of an association be approved by the competent authorities, the new Law has introduced the system of inscription into the register of associations, whereby an association obtains the quality of legal person. The competent authorities can only refuse inscription into the register in determined cases or forbid the activity of a given association.

2. *Basic Law on Public Meetings* (*Official Gazette of the SFRY*, No. 16/65)

Instead of the obligation to report meetings and other public assemblies beforehand, as prescribed under the previous regulations, the Law has introduced the principle of free holding of meetings, without previous notification. A notification is required only when a meeting is held in a public square, a street or another place open to public transport. A meeting can be forbidden only for definite reasons, determined by the Law.

V — JUSTICE

1. *Law on Amendments and Additions to the Criminal Code* (*Official Gazette of the SFRY*, No. 15/65)

The amendments provide for an increased protection against grave international crimes, such as war crimes and criminal acts of genocide, by stipulating that with respect to the penal prosecution and the execution of penalties for such acts the statute of limitations cannot be applied.

2. *Law on Amendments and Additions to the Law on Criminal Procedure* (*Official Gazette of the SFRY*, No. 12/65)

The amendments ensure a greater protection of citizens with respect to the bodies competent for ordering detention. Another amendment deals with the right to obtain compensation for damages in some determined cases. Whereas according to the previous regulation this right belonged only to persons who had been imprisoned or detained unlawfully, the new Law recognizes this right also to persons who have been imprisoned or detained without justification.

3. *Law on Amendments and Additions to the Basic Law on Infringements* (*Official Gazette of the SFRY*, No. 13/65)

Until now there has been no judicial control with regard to decisions on punishments for infringements. In order to ensure, to a greater extent, that the decisions of magistrates should be in conformity with the law, a special legal remedy has been introduced, namely the demand for court protection against decisions involving severe punishments for infringements (imprisonment or fine exceeding a certain amount). This legal remedy can be used both in cases of violation of the law and in those of incorrectly established facts. The Supreme Court of the Republic brings decisions on such appeals.

4. *Law on Amendments and Additions to the Law on Administrative Disputes* (*Official Gazette of the SFRY*, No. 16/65)

Some amendments broadening the rights of citizens have been introduced into the system of court protection against administrative acts, which was introduced in 1952. In the past such judicial protection was provided only for cases when a formal decision on rights and obligations in administrative matters was brought by a government body. The amended Law also provides for judicial protection in cases where a government body, by misusing its competences, takes an action which is unlawful and prejudicial to the rights of citizens. In such a case the interested person appeals to the District Court, requesting that the court forbid the further committing of unlawful acts and take necessary steps in order to establish a situation which will be in conformity with the Law.

Another novelty is the introduction of judicial protection in cases where, owing to some final acts—not having an administrative character—some right or freedom guaranteed by the Constitution is violated.

These changes strengthen judicial control to the benefit of the citizens, with a view to protecting their rights more effectively.

VI — THE CONSTITUTIONAL COURT

The new Constitution adopted in 1963 instituted constitutional courts (the Constitutional Court of Yugoslavia and six republic constitutional courts), in order to provide more effective protection to the social relations established under the Constitution. The constitutional courts have developed their activity and have become significant new instruments for the protection of the citizen's rights. Some data will be given here only about the work of the Constitutional Court of Yugoslavia (hereinafter called the Court), in the period from 1 January to 15 December 1965. The Court considered and passed decisions primarily bearing on the appraisal of legality of laws and other legislative acts of a general character, viz. whether the federal laws were in compliance with the Constitution, or whether the republic laws were in harmony with the Constitution and relevant federal laws. Moreover, the Court also appraised the constitutionality and legality of other federal regulations and of decisions passed by assemblies of communes, assemblies of republic communities of social security, as well as the appraisal of regulations adopted by the work organizations in conformity with the principle of self-management. During the period under review, 445 cases relating to the above-mentioned matters were submitted to the Court and 226 of those cases were settled by it. The Court's decisions were published in the *Official Gazette of the SFRY*.

The Court also considered the actual meaning that should be conferred to a certain regulation so as to have it conform to the Constitution.

An important field of the Court's work was to appraise the constitutionality and the legality of specific cases of performances or acts whereby the citizen's rights have been violated. These acts were concerned with social security, civil rights, nationalization, expropriation and confiscation, labour relations, housing, criminal acts, etc. The matters examined by the Court were actually the sentences pronounced by law courts as well as the decisions by government organs and self-managing organizations. The Court dealt with 1,181 cases, of which 994 were settled in the above-mentioned period.

In addition, the Court watched all developments of interest for the implementation of constitutionality and legality, such as deficiencies in the legal system, irregularities with regard to the publishing of various regulations or the time of their enforcement, exceeding of powers by government organs, exceeding of competences by assemblies of communes in dealing with certain matters, etc.

VII — LABOUR RELATIONS

1. *Basic Law on Labour Relations* (*Official Gazette of the SFRY*, No. 17/65)—

The development of self-management in all fields of social life, the expansion of self-manage-

ment from economic (where it had been introduced in 1950) to non-economic fields (education, science, culture, public health, social welfare and other social services, government organs and other organizations) called for some modifications in the system of labour relations, in compliance with the new Constitution of 1963. This was the reason for the adoption of the present Law on Labour Relations.

The Law proceeds from the basic constitutionally established principle of self-management over the socialized means of production as the foundation of the socio-economic system of Yugoslavia as well as from the constitutional principle that work alone and the results of the work performed determine the material and social position of the workman. The Law also takes into consideration the constitutionally established principle that working men—as members of work organizations having equal rights—should take decisions as directly as possible on regulations governing mutual labour relations, conditions of work, distribution of income, and other questions relating to their economic position.

The work organization is an economic enterprise, shop, co-operative, as well as educational, cultural, health and social welfare institution, other organizations in the field of social and public services, as well as other similar organizations. The work community consists of all workpeople who have established employment relationship with the work organization.

In Articles 9 and 10 the Constitution guarantees to the workpeople self-managing rights in the field of labour relations, so that—on the basis of self-management—the workpeople decide independently on the following:

The conclusion of a labour contract, the termination of the workman's employment relationship with the work organization, and other questions concerned with mutual labour relations;

The distribution of the part of earnings allocated for personal incomes;

The determination of hours of work in conformity with the general conditions of work;

The consideration of other questions of mutual interest, such as the improvement of conditions of work, the introduction of safety measures at work and holidays;

The securing of conditions for their education and the raising of individual and social standards, which includes, among other things, both professional training, economic as well as general education and physical training.

The present Law has been adopted in order to establish employment relationships in conformity with the above-mentioned premises and the provisions of the Constitution relevant to the method of implementing the principle of self-management in work organizations, embodied in Articles 90 to 93.

The chief characteristic of the new system of labour relations is that the concept of employment as a relationship between two polarized sides, namely those of the employed and the employer in which the workman is subordinated to the employer, has been given up. Instead, labour relations have acquired the character of mutual relations of workpeople in the process of work.

The Law lays down only the general framework and norms for ensuring the establishment of labour relations based on self-management and eliminating the obstacles impairing the development of self-management. It places the determination of concrete conditions and components of labour relations in the hands of the work organizations which are to regulate them by their statutes or some other general acts as such solutions will suit better the requirements of individual work organizations.

As distinct from the former Law, under which there existed regular (permanent) employment relationship for a specified or unspecified period of time, part-time (additional) and provisional employment relationship, the new Law provides for only one type of employment relationship. The rights of workpeople depend on the work performed.

The basic principles of labour relations are laid down in Part One of the Law (Articles 1 to 17), the full text of which is given below:

Part One

BASIC PRINCIPLES

Article 1

In implementing self-management on the basis of freely associated labour for the purpose of common utilization of the socially owned means of production, the workpeople as members of the work community establish in the work organizations their mutual relations and independently determine mutual duties and rights deriving from associated labour (labour relations).

Article 2

(1) The workpeople freely enter into and terminate their employment relationship with the work organization.

(2) By taking up a job in the work organization, the worker becomes a member of the work community with equal rights, assumes duties and acquires rights at his work place and on the basis of his work.

(3) The work community may decide to terminate—against his will—the work of every member of the work organization and membership in the work community only if it establishes, pursuant to the provisions of this Law, that the conditions for his work in a given work organization have ceased to exist.

(4) By terminating his work in the work organization, i.e. by his exclusion from the work community, the worker is released from the duties and rights acquired at work and deriving from his employment relationship with a given work organization.

Article 3

(1) The work community regulates labour relations by statute or other acts which are adopted by work organizations either directly or through the organs of management of the work organization (hereinafter called the organs of management).

(2) The work community establishes labour relations in accordance with socialist principles, mutual co-operation and responsibility of members of the work community towards one another at their work place and towards the work community as a whole.

(3) Realizing the principle of co-operation with equal rights at work and in management, the work community creates the necessary conditions whereby it enables all its members to participate as directly as possible, actively and independently, either as individuals or as members of small or broader work units within the work organizations, in the making or the consideration of any proposal regulating any question whatsoever in the field of labour relations.

(4) The work community establishes the basic provisions on labour relations by the statute of the work organization (hereinafter called the statute).

(5) By the Rules of Operation or by some other general act (hereinafter called the general act), the work community elaborates the conditions and the manner of acquiring and exercising the duties and rights deriving from associated labour.

(6) The Law and the statute specify which general acts on labour relations are compulsorily adopted by the work community of a work unit and/or the work community of the work organization, as well as the method and procedure for their adoption.

Article 4

Labour relations are realized through organized labour where every worker has his particular workplace or job (hereinafter called the workplace) which is independent or a component of the production process in the work organization.

Article 5

The work community organizes work in the work organization in a manner enabling its members to exercise the right to limited hours of work, in conformity with the provisions of the Law.

Article 6

By developing the production forces, by increasing labour productivity, by promoting work processes and by regulating labour relations at work on the basis of the principle of self-management, the work community contributes, in addition to the conditions secured by the society, to the realization of the worker's right to work and continuous employment.

Article 7

By creating material, social and humane conditions of work, the work community, in accordance with the organization of work, secures to every member the possibility to share in the process of work according to his personal work ability and liking, and thereby renders possible and encourages the process of liberation of labour in the field of labour relations as well.

Article 8

Realizing the principle "to everyone according to his abilities" the work community is under obligation to ensure that:

(1) In the organization of the process of work and in management, every individual worker may display his real professional competence and work abilities, and that the process of work be developed and promoted in such a manner as to render possible the development of the work abilities and personality of every worker;

(2) Higher abilities entail the taking up of more complex and more responsible tasks and duties, concurrently with corresponding conditions and incentives for the full display of such abilities;

(3) The work abilities of the worker be evaluated only on the basis of successful fulfilment of the tasks and requirements of his workplace.

Article 9

(1) Realizing the principle "to everyone according to the work performed", the work community is under obligation to ensure that:

1. The worker should have—for equal work performed under equal conditions—an equal share of the resources earmarked for personal incomes and realize the other rights which are acquired on the basis of the work performed;
2. The share of workers in the distribution of resources earmarked for personal incomes, and in the realization of other rights which are acquired in accordance with the work performed be established only on the basis of the complexity of work and other requirements of the worker's workplace as well as his work contribution towards the fulfilment of the tasks of a given workplace;
3. Workers should have equal rights, regardless of differences of nationality, race, religion, sex, language, education, social position or membership in a given organization;
4. The workers establish, as directly as possible, the criteria and norms for the distribution of personal incomes, for the determination of duration of annual leave and of other rights acquired on the basis of the work performed, for the purpose of determining the hours of work, probation period, etc.;

(2) The worker working full-time is entitled to enjoy all rights, to the fullest extent, in accordance

with the degree of fulfilment of his work tasks and obligations, when the extent of these rights is conditioned by the fulfilment of tasks and obligations.

(3) The worker acquires the right to take part in self-management and in the distribution of income of the work organization on the basis of his personal work performed in a given work organization, regardless of the number of hours of work spent in that work organization.

Article 10

Workers temporarily not a work are entitled to social insurance, protection at work, professional training, subsistence allowance and other benefits to which they are eligible on the basis of work, in conformity with the special laws and self-management acts.

Article 11

(1) The worker has at his workplace general and special obligations with regard to work and responsibilities towards other workers, socially owned instruments of labour, and the work as well as the social community.

(2) The worker bears personal responsibility for the infringement of obligations mentioned in paragraph 1 of this Article, and for damage caused by his fault.

Article 12

Discussions on proposals and the drawing of general acts for the implementation of the principles regulating employment relations in work organizations, established by the Constitution and the respective law, are public.

Article 13

The violation of the principles of self-management and equality as well as any form of coercion or arbitrariness with regard to the regulation and realization of employment relations raise the question or responsibility in conformity with the Law.

Article 14

In the realization of their rights at work and on the basis of their work organizations, workers enjoy legal protection, according to the procedure established by law.

Article 15

In regulating and realizing employment relations, the work community makes use of the initiative and activity of Trade Unions, informing its members about proposals relating to employment relations and the opinions as well as proposals of the Trade Unions and other socio-political organizations and associations in connexion with the application of the provisions of the present Law to concrete relations and decisions in the field of employment relations.

Article 16

In expressing the basic principles concerning relations among workers based on their collective work and socially owned instruments of labour, the provisions of the present Law, together with the principles of the Constitution, provide the basis for the interpretation of the provisions of the Law, statutes and general acts on employment relations.

Article 17

(1) The principles, duties and rights established by the present Law relate to all workers employed in work and other organizations, state bodies and associations (hereinafter mentioned as work organizations), if not otherwise stipulated by the present or other laws.

(2) The principles, obligations and rights stipulated by the present Law, are also applied to those workpeople who pursue independent activities or participate personally, in a particular manner, in the collective work of the work organizations or perform services for legal entities and individuals, in a manner and under the conditions prescribed by the present Law, in accordance with the specific conditions under which the work is performed.

(3) The obligations and rights of workers employed by persons entitled under the Law to employ workers are regulated by special law, in conformity with the social, material, legal and other forms of protection guaranteed to workpeople by the present Law.

(4) The provisions of the present Law do not refer to the workpeople who are engaged by the work organization occasionally or temporarily, on the basis of a contract, for the execution of the specific job.

Under the Law, the term worker refers to all persons who have established an employment relationship.

The second part of the Law, dealing with the rights and obligations of workers, elaborates the above-mentioned principles. This part consists of 11 sections.

1. *Establishment of an employment relationship*

Under the provisions of the Law, each vacant workplace is accessible to all persons under the same conditions. The Law provides for the possibility of probation work, as a special condition for work at a specific workplace.

The Law has regulated, in detail, the institution of competition; the workplaces designated by the statute of the work organization as executive posts, must be filled through competition, which is public. An extensive use of public competition is provided for the other work posts as well. The participants in the competition are protected against possible abuses through the possibility to lodge a complaint against a decision, if they consider that the prescribed procedure has been violated and that such a violation has influenced substantially the decision relating to the selection of the candidate, or if they feel that the selected candidate does not fulfil the

prescribed conditions. If the complaint is rejected, the participant in the competition is entitled to go to court.

The admission of workers to the workplaces without competition is regulated in such a manner that decisions can be brought only by elected self-managing bodies.

The Law does not provide for a written contract as the basis of employment relationship in view of the fact that the establishment of a labour relationship is an act of entry into the membership of the work community. Instead of this, the decision of the competent body on admission is communicated to the worker in a written form. Such a decision cannot be recalled from the date of its receipt by the worker till the date of his taking up work while a worker may render the decision ineffective even after it has been brought, by not reporting to work.

2. *Assignment of workers to workplaces*

The workplace to which the worker will be admitted is specified at the time of the establishment of employment relationship and, for this reason, the provisions relating to the assignment to workplaces refer only to the initiation of the worker into the work he will perform at the workplace to which he has been admitted.

Having been assigned to a specific workplace the worker is under obligation to further specialize himself in his work. On the basis of this he derives his right to be assigned to a new workplace for which greater working abilities are required.

The transfer of a worker to another workplace requiring smaller working abilities, provided he is performing his regular work satisfactorily, can be effected only with the worker's consent. Exceptionally, such a transfer can be effected only temporarily, in the case of a *vis major*. The transfer from one locality to another, where the work organization has its organizational units, plants, etc., can be also effected only with the worker's consent. Without such consent it cannot be effected unless it has been provided for under the statute.

The management of smaller working groups within the work organization, if provided for under the statute, is chosen by the workers themselves out of their ranks; each worker who fulfils the required conditions may compete for such a workplace. Elections take place at the meeting of workers. He who has not been elected and who believes that he is better qualified for a given workplace than the person who has been elected, may lodge a complaint with the workers' council whose decision is final.

Executive workplaces are subject to re-election each fourth year. The re-election of the same persons is permitted without any restrictions. Those who are not re-elected to executive posts are entitled to request the work organization to assign them to another workplace corresponding to their work abilities. If such persons do not accept to work in another post they cease to be members of the work community.

3. *Hours of work*

Workers are entitled to limited hours of work of 42 hours per week. However, a special federal Law establishing a 42-hour working week has left it to the work organizations to introduce the new working hours within a period of five years. In the meantime, they can work for more than 42 hours per week and these are considered to be full working hours.

The Law has expanded considerably the rights of pregnant women and of mothers with small children. In the event of pregnancy and childbirth, a woman worker is entitled to a leave of absence lasting 133 days. Under the former regulations pregnant women were entitled to a leave of 105 days. The right to shorter hours of work, amounting to 4 hours a day has been extended. According to the former regulations mothers with small children were entitled to the shorter hours of work during six months. Now, on the basis of the new Law, they are entitled to shorter hours of work during a period of eight months. After the expiration of this period, a woman worker may work four hours a day until the child attains the age of three, unless in the opinion of a medical commission the child is in greater need of his mother's care. All such work is considered as full hours of work.

The provisions on the protection of youth and disabled persons, such as guaranteed work after the completion of military service, prolonged annual rest, special guarantees with regard to admission to work, assignment to night work, etc., are elaborated and reinforced in the Law.

Workers, working during half of the regular working hours at least, enjoy all rights at work and on the basis of their work as established by the Law or by the statute of the work organization.

A worker, who works less than during half of the working hours, is entitled to take part in management. He also participates in the distribution of income according to the work he performed. Such a worker enjoys the protection at work and is socially insured for cases of injury at work or of professional illness.

4. *Fixing hours of work*

The hours of work are fixed by the statute of the work community. If the working hours are of public interest (for example in transport), the working hours are fixed in conformity with the regulations of the municipal assembly.

A new, significant change in the Law is the right of seasonal workers, i.e. those who work at least four months during the year and realize a greater number of hours than the full working hours prescribed for that period, to have the working hours transformed into working days with full hours of work. The working days thus established are counted as regular work.

5. *Duration and organization of rest*

The Law regulates daily, weekly and annual rest as well as all other forms of absence from work.

A worker cannot renounce his right to annual leave, nor can that right be abrogated on the part of the work organization. Annual leave is granted for a period of 14 to 30 workdays and, in exceptional circumstances, annual leave may last even 60 workdays. The duration of annual leave is fixed by the work community depending upon the conditions of work, years of service, results of work and other factors (for example mothers with children, persons in poor health). The annual leave of workers under 18 years of age is determined in accordance with the criteria applicable to other workers and the length of annual leave thus established is increased by 7 additional workdays.

A worker may, at his own discretion, use one day of his annual leave, in order to attend to his personal affairs.

Annual leave may be made use of, at the request of the worker, in two parts.

Furthermore, under the Law a worker is entitled to a seven-day annual leave of absence within one calendar year (for the purpose of getting married, at the time of death of a member of his family, school examinations and the like).

The statute establishes the circumstances under which a worker is entitled to be absent from work without remuneration for the purpose of attending to his personal affairs. A worker availing himself of this right remains a member of the work community. However, his rights, acquired at work and on the basis of employment, remain in abeyance.

6. *Participation of workers in the distribution of personal incomes*

A worker cannot be deprived of his right to participate in the distribution of personal income according to the work he performed.

The work community establishes the basis and criteria for determining the contribution made by a worker through his personal work.

Personal incomes are established on the basis of the final balance sheet. In the course of the year workers receive advance payments on their remunerations. At the time of every payment, workers receive a written wage report.

A worker is entitled to a minimum personal income, irrespective of the work and operation results of the work organization. The minimum wage is fixed by separate federal regulations.

7. *Responsibility of workers towards the work community*

The Law has introduced essential changes in this respect. The system of disciplinary measures has been abandoned because of the fact that under such a system there existed subordination to the employer. Moreover, fines, as a measure for maintaining labour discipline, have also been abandoned. The work community itself fixes, in a general act, the responsibilities and duties of workers, as well as the procedure applicable in the case of infringement of prescribed responsibilities at work, the measures which are applied and the bodies which apply them. These measures may be reprimand, public reprimand, last public reprimand and expulsion from the work community. Expulsion applies only in cases of grave violation of duty at work. A decision on this matter is passed by the workers' council or the work unit, to which the worker in question belongs; decisions are taken by secret ballot. If a worker finds that the established procedure or his rights have been infringed by the expulsion, he is entitled to institute court proceedings.

The worker must make good the material damage caused by him intentionally or due to negligence.

However, should he fail to do so, the question of compensation can be settled only in court. The work organization is held responsible for material damage caused by the worker to third parties.

8. *Termination of work*

A worker has the right to terminate his employment relationship at any time, provided that he communicates his intention to the work community and that he remains on the job for the period of time prescribed by the statute. This period of time cannot be less than 30 days nor can it exceed six months, unless the worker and the organization agree otherwise.

A decision on the termination of employment relationship without the consent of the worker can be taken in the circumstances prescribed by the Law. For example, employment relationship may cease when a particular workplace is abolished and there is no possibility of re-assigning the worker to another suitable workplace, or when the volume of operations has been reduced in a lasting manner. Also, employment relationship may cease when the worker's capacity falls short of the requirements of the workplace; however, one has to ascertain in an objective manner that there is no possibility of assigning the worker to a workplace suitable to his working ability.

The work organization cannot pass a decision dismissing a worker against his will under the following circumstances: during temporary incapacity due to illness, while undergoing training, during annual leave, during military exercises, while a woman-worker is expecting a child or in the case of a mother with a child under eight months of age and while a worker is a member of the workers' council, board of management or other management bodies, a councillor or a deputy.

Employment relationship may cease irrespective of the desire of the worker after the completion of the qualifying period for pension purposes, after expulsion from the work organization, when found totally incapacitated for work, and when the performance of operations of the workplace to which the worker has been assigned has been banned by the Court.

9. *Employment book*

The employment book is a public document which serves to attest the facts necessary for the realization of rights which are based on, or derive from employment relationship. It is prohibited to enter negative data about the worker into his employment book.

10. *Realization of rights of workers at work and on the basis of employment*

A worker has the right to attend every meeting of the body of management when his rights or duties are considered by the work organization.

A worker has the right of appeal against every decision relating to his rights or duties accruing from employment relationship. The competent second instance authority is under obligation to act on the appeal within 30 days.

The Law also entitles the worker to address himself, concurrently with the lodging of an appeal, to the competent municipal administrative authority. This authority will take action if it finds that the right of the worker has been encroached upon. The municipal authority can, when it is obvious that rights of the worker prescribed by law or deriving from the general act of the work organization have been infringed—provided that the worker has lodged an appeal—decide to postpone temporarily the carrying out of the decision taken by the work community pending a court decision.

The worker may realize his rights through the Court (labour dispute).

The worker is exempted from paying administrative or Court taxes during proceedings relating to his employment relationship.

11. *Special provisions*

The Law provides that the workers elected to representative bodies or appointed to given functions—if their election calls for an interruption of work in the work organization from which they have been elected or appointed—should remain members of the work communities. However, in the meantime, their rights remain in abeyance.

In state bodies, employment relationships are organized by the work community and the administrative head of the given body, in conformity with the present Law.

2. *Basic Law on the Introduction of a 42-hour Week* (*Official Gazette of the SFRY*, No. 17/65)

The Law prescribes that work organizations are under obligation to introduce a 42-hour week within the period of time and conditions prescribed by this Law.

A pre-condition for the introduction of a 42-hour week is that the work organization must ensure the realization of at least the same performance and labour output as prior to the introduction of the 42-hour week. This actually implies that it must realize at least the same volume of production or services, at least the same output per worker or at least the same real personal income per worker. The 42-hour week may be introduced immediately or in stages. However, in doing so, it is necessary to formulate a plan for transition to a 42-hour week and take the necessary measures towards that end.

The Law provides for a period of 5 years within which work organizations are to carry out this transition. Furthermore, a possibility is provided to have this term extended for an additional period not exceeding one year.

If measures for the introduction of a 42-hour week are not taken, the municipal assembly is empowered to place such a work organization under compulsory management.

The laws of the republics will deal with the specific conditions and measures for the implementation of this Law.

VIII — HEALTH

1. *Basic Law on Protection Against Air Pollution* (*Official Gazette of the SFRY*, No. 30/65)

This Law constitutes a novelty, as it is the first Law governing this subject-matter in Yugoslavia. It prescribes protection against the pollution of air by gas, steam, smoke, dust, radio-active and other materials. The Law provides for supervision and the undertaking of measures pertaining to the construction of projects, vehicles, transportation, storing and disposal of harmful waste materials, equipment and instruments. Protection against air pollution is the duty of socio-political communities, work and other organizations and citizens.

The Law authorizes the sanitary and other inspection services to take necessary administrative steps, including the prohibition of construction or use of objects, vehicles, installations and equipment, removal of shortcomings, prohibition of traffic, compulsory installation or use of required equipment as well as other measures.

The Law prescribes a term of 4 years within which period all those concerned should act in conformity with its provisions.

This regulation does not exhaust the entire matter. It is left to the republics to further elaborate and amend the rules governing protection against air pollution.

2. *Basic Law Respecting the Protection of Labour* (*Official Gazette of the SFRY*, No. 15/65)

The Constitution of 1963 has established the right of workers to safe working conditions as one of the fundamental rights of citizens. The Constitution also provides that basic legislation ensuring safe working conditions falls within the competence of the Federation. The present Law has been enacted in conformity with this constitutional provision. The Law regulates, for the first time, the question of safe working conditions through an act covering the basic aspects of this protection.

Protection at work is ensured by work organizations, bodies of socio-political communities and other corporate bodies where employed persons are at work as well as by private individuals who employ outside labour.

The Law prescribes the general measures and rules ensuring safe working conditions. Thus, it provides for general protection measures with regard to construction projects; tools; movement of employed persons and transport of goods; measures regulating noise and vibration, electric

power and harmful radiations; protection measures against dangerous and harmful substances and fire prevention; health conditions in workplace and provision of first aid; personal protective equipment and devices. The Law further regulates the adoption of measures for work under special conditions, that is, in circumstances where employed persons are exposed to special risks of injury or illness. It establishes the obligations of organizations, including the adoption of general safety provisions; the duties of competent authorities and persons; the organization of duties connected with the protection of labour; the basic and further training; the measures to be taken in workplaces involving special working conditions; the periodic examination and testing of tools and equipment installations, etc. The Law, moreover, specifies the rights and obligations of employed persons. Finally, it regulates the operation of institutions responsible for improving the protection of labour, the keeping of records and the supervising of compliance with the provisions of this Law. The work of supervision is carried out by the organs of labour inspection authorities—labour inspectors—who are authorized to take the necessary measures, such as the removal of shortcomings and irregularities, the prohibition of work in workplaces dangerous to health, etc.

The Law has codified and further elaborated the rules relating to the protection of labour embodied in various regulations. The Law, however, has not exhausted the entire matter, which is to be expanded and further elaborated by the laws of individual republics and other general acts.

ZAMBIA

THE REFORMATORY SCHOOLS RULES, 1965

Statutory Instrument No. 7 of 1965 [1]

...

PART III

ADMISSION, DISCHARGE AND REMOVAL

9. (1) The superintendent shall, upon the delivery to him of an order for detention in a reformatory school, make all the necessary arrangements for the conveyance of the young person, named therein, to the institution.

(2) Every inmate shall be searched on admission and at such times subsequently as may be directed, and all unauthorised articles shall be taken from him.

(3) The searching of an inmate shall be conducted in as seemly a manner as is consistent with the necessity of discovering any concealed article.

...

PART VII

HEALTH AND CLEANLINESS

32. Every inmate shall obey such directions as may from time to time be given to him as regards washing, bathing, shaving and haircutting.

...

PART VIII

EMPLOYMENT

34. (1) Every inmate shall be required to engage in useful work, all of which so far as is practicable shall be performed in association with other inmates whether on the necessary services of the institution, or in workshops or on outdoor work; and shall be instructed, as far as possible, in useful occupations which may help him to earn his livelihood on discharge.

(2) No inmate shall be set to work unless he has been certified as fit for that type of work by the medical officer.

(3) Every inmate who has not been exempted by the medical officer shall be required to work at least forty hours a week and shall in addition to work attend educational classes as required.

...

35. (1) Except where the Chief Inspector otherwise directs inmates shall not be required to do any work, other than keeping the institution clean and preparing food, on Sundays and public holidays.

(2) The superintendent shall make special arrangements for the observation by inmates of religious and national festivals.

PART IX

RELIGIOUS INSTRUCTION

36. Adequate arrangements shall be made for the provision of religious ministration or instruction to inmates according to their religious beliefs.

37. Every inmate shall, from the beginning of his training, be furnished with such religious books as are recognised for the faith to which he belongs, and are obtainable.

PART X

EDUCATION

38. (1) Provision shall be made for educational classes for the benefit of all inmates and every inmate shall attend such classes as may be directed by the superintendent.

(2) A library of books for the use of the inmates shall be provided and every inmate shall be allowed to have not more than three library books in his room or dormitory at any one time and to exchange them as often as possible.

(3) The superintendent may arrange for lectures, concerts and debates for inmates to take place outside the hours of work.

PART XI

VISITS AND COMMUNICATIONS

39. (1) Communications between inmates and other persons shall be allowed only in accor-

[1] *Supplement to the Republic of Zambia Government Gazette*, of 15 January 1966.

dance with this rule, and the superintendent may restrict such communications still further if he thinks it necessary for the maintenance of discipline and order in the institution and the welfare of the inmates.

(2) Save as provided in paragraph (3) of this rule, visits and letters shall be governed by the following:

(*a*) on admission an inmate shall be entitled to write and receive one letter;

(*b*) an inmate shall be entitled to write one letter every week to persons approved by the superintendent and to receive letters as often as the superintendent considers desirable;

(*c*) an inmate shall be entitled to receive one visit of thirty minutes' duration every month from three persons on such conditions relating to visits as may be imposed by the superintendent.

(3) The superintendent may allow an inmate to write a special letter and to receive a reply or to receive a special visit at his discretion.

(4) The superintendent shall at any time communicate to an inmate, or to his relatives or friends, any matter which he thinks likely to be of importance to such inmate.

(5) The degree of supervision to be exercised during visits to inmates shall be within the discretion of the superintendent.

...

PART XII

OFFENCES AND PUNISHMENTS

47. An inmate who—

(*a*) disobeys any order of the superintendent or of any other officer or any institution rule;

(*b*) is careless, idle or negligent at work or refuses to work;

(*c*) is indecent in language, act or gesture;

(*d*) escapes from the institution or from lawful custody;

(*e*) mutinies or incites other inmates to mutiny;

(*f*) commits an assault of any other inmate;

(*g*) commits personal violence against any officer or servant of the institution;

(*h*) leaves his room or dormitory or place of work or appointed place without permission;

(*i*) wilfully disfigures or damages any part of the institution or any property which is not his own;

(*j*) has in his possession any unauthorised articles, or attempts to obtain such articles;

(*k*) gives to or receives from any person any unauthorised article;

(*l*) makes repeated and groundless complaints;

(*m*) in any way offends against good order and discipline;

(*n*) attempts to do any of the foregoing things; or

(*o*) aids and abets the doing of any of the foregoing things;

shall be guilty of an institution offence.

...

54. A record shall be kept in every institution of the charge against any inmate, the evidence supporting the charge, the decision of the superintendent, visiting justice or senior officer appointed by the Chief Inspector, and the punishment awarded. A special book kept for the purpose shall be used to record any award of corporal punishment, the date of infliction and the number of strokes inflicted.

...

PART XIII

RESTRAINTS

61. No inmate shall be placed in handcuffs or other mechanical restraint as a punishment.

...

PART XIV

COMPLAINTS BY INMATES

64. (1) Any request made by an inmate to see the superintendent or the Chief Inspector shall be recorded by the officer to whom it is made and conveyed without delay to the superintendent, who shall inform the Chief Inspector, as the case may be, of any such request.

(2) The superintendent shall, at a convenient hour every day other than the weekly holiday and public holidays, hear the applications of all the inmates who have requested to see him.

...

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

NOTE [1]

TRUST TERRITORY OF NAURU

LEGISLATION

A. Constitutional

The Commonwealth Parliament passed the Nauru Act 1965 (No. 115 of 1965), providing for a new system of government for the Territory of Nauru. The Act gives effect to an agreement made after consultation with the Nauruan people, between the Governments comprising the Administering Authority, namely, the Governments of the Commonwealth of Australia, of New Zealand and of the United Kingdom of Great Britain and Northern Ireland. A copy of the agreement is set out in the Second Schedule to the Act.

The Act provides for a complete system of government. The Administrator is to be appointed under Part II of the Act and not directly under the intergovernmental agreement.

Part III of the Act provides for the establishment of a Legislative Council which will have 15 members, comprising the Administrator, 9 elected members, who will be Nauruans and elected by Nauruans only, and 5 official members. Thus the Nauruan members will be in the majority.

Part IV of the Act sets out the powers of the Legislative Council. It has a general power to make Ordinances for the Territory, except Ordinances with respect to defence, external affairs, the phosphate industry, phosphate royalties and the ownership and control of phosphate-bearing land. Ordinances are subject to disallowance by the Governor-General of Australia.

Part V of the Act confers upon the Governor-General the power to make Ordinances for the Territory with respect to the subjects, listed above, that are excluded from the powers of the Legislative Council.

Part VI of the Act provides for an Executive Council consisting of the Administrator, two persons who are to be Nauruans and elected members of the Legislative Council and two persons who are official members of that Council. The functions of the Executive Council are such functions as are conferred upon it by Ordinance and, in addition, to advise the Administrator in relation to any matter referred by him to the Executive Council.

Part VII of the Act provides for the judicial system of the Territory. The new courts established are to be the same as those existing before the Act came into force but provision is made for an appeal from the Court of Appeal of Nauru to the High Court of Australia. The Act provides also that questions relating to the interpretation of the Act are to be determined by the Central Court constituted by a Judge and not by that Court constituted by three magistrates.

B. The Principle of Equal Treatment

(Universal Declaration, Articles 2, 6 and 7)

The Aliens Ordinance Repeal Ordinance 1965 (No. 4 of 1965) repealed the Aliens Ordinance 1935 which was considered to contain discriminatory provisions.

C. The Suffrage

(Universal Declaration, Article 21)

The Electoral Ordinance 1965 (No. 7 of 1965) provided the necessary machinery for the election of the members of the Legislative Council for Nauru established by the Nauru Act 1965 (described above). The Ordinance provides for the division of the Territory into electoral districts, for electoral rolls, for the issue of the writ, nominations, polling, scrutiny of votes and disputed elections. The first election took place on 22 January, 1966, and the first meeting of the Legislative Council was held on 31 January, 1966.

D. Social Services

(Universal Declaration, Article 25)

The Adoption of Children Ordinance 1965 (No. 2 of 1965) makes, for the first time, comprehensive provision for the adoption of children in the Territory.

[1] Note furnished by Mr. J. O. Clark, Principal Legal Officer (Executive), Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights.*

TRUST TERRITORY OF NEW GUINEA

LEGISLATION

A. The Principle of Equal Treatment

(Universal Declaration, Articles 2 and 7)

The Kavieng Public Baths Reserve By-Laws 1965 regulate the admission of persons, which is to be without discrimination, to the Reserve. They replace By-Laws which contained discriminatory provisions.

B. Judicial and Administrative Guarantees of Due Process

(Universal Declaration, Articles 8 and 10)

The Criminal Code Amendment (New Guinea) Ordinance 1965 (No. 69 of 1965) amends the Criminal Code so as to enable a Court, in certain circumstances, to impose a lesser penalty than the death penalty for the crime of wilful murder. Where the Court finds that these circumstances do not exist, the amending Ordinance provides for an appeal on the ground that the circumstances did exist.

C. Conditions of Work

(Universal Declaration, Articles 23 and 25)

The Workers' Compensation Ordinance 1965 (No. 58 of 1965) and the Workers' Compensation (Special Provisions) Ordinance 1966 (No. 32 of 1966) have the effect of making increased rates of compensation payable.

D. Right to Education

(Universal Declaration, Article 26)

The University of Papua and New Guinea Ordinance 1965 (No. 16 of 1965) establishes the first University in the Territory. The objects of the University include the following:

(*a*) To provide facilities for study and education and to give instruction and training in all such branches of learning as may from time to time be provided by the Statutes of the University;

(*b*) To aid by research and other means the advancement of knowledge and its practical application;

(*c*) To confer after examination, the degrees of Bachelor, Master and Doctor and such other degrees, diplomas, certificates and other academic honours as are authorized by the Statutes;

(*d*) To provide facilities for university education throughout the Territory by the affiliation of educational institutions, by the establishment of tutorial classes, correspondence classes, university extension classes and vacation classes and by such other means as the Council deems appropriate; and

(*e*) To liaise, collaborate and reciprocate with other Universities and institutions of learning, whether within or without the Territory, in the provision of facilities, the recognition of degrees and other status and the interchange of staff, students and information, and in any other way not inconsistent with its status as the University.

The Institute of Higher Technical Education Ordinance 1965 (No. 17 of 1965) establishes an Institute of Higher Education in the Territory. The functions of the Institute are to include the following:

(*a*) To encourage and provide facilities for study and education in technical subjects and to give instruction and training in technical branches of learning and skills;

(*b*) To provide for research into technical branches of learning and to assist its practical application;

(*c*) Subject to the by-laws of the Institute, to award and confer diplomas, certificates and other academic honours;

(*d*) To provide facilities for technical education throughout the Territory by the affiliation of educational institutions, by the establishment of tutorial classes, correspondence classes, extension classes and vacation classes and by such other means as the Council deems appropriate; and

(*e*) To liaise, collaborate and reciprocate with other institutions of learning and training institutions, whether within or without the Territory, in the provision of facilities, the recognition of diplomas and certificates and other status and the interchange of staff, students and information, and in any other way not inconsistent with its status as the Institute.

B. Non-Self-Governing Territories

AUSTRALIA

NOTE [1]

TERRITORY OF PAPUA

The Criminal Code Amendment (Papua) Ordinance 1965 (No. 70 of 1965) makes provision similar to that of the corresponding Ordinance for the Territory of New Guinea (No. 69 of 1965), see above.

The Workers' Compensation Ordinance 1965 (No. 58 of 1965), the Workers' Compensation (Special Provisions) Ordinance 1966 (No. 32 of 1966), the University of Papua and New Guinea Ordinance 1965 (No. 16 of 1965) and the Institute of Higher Technical Education Ordinance 1965 (No. 17 of 1965), all described above in the notes relating to the Territory of New Guinea, apply equally in the Territory of Papua, which is governed under an administrative union with the Territory of New Guinea, under the name of the Territory of Papua and New Guinea.

TERRITORY OF CHRISTMAS ISLAND

Social Services

(Universal Declaration, Article 25)

The Tuberculosis Ordinance 1965 (No. 1 of 1965) provides for the protection of the health of the public by prescribing compulsory tests for tuberculosis and the isolation and treatment of sufferers. In certain circumstances, a patient may be detained for treatment but the Ordinance provides for the review by a Court of orders for detention.

Freedom of the Individual

(Universal Declaration, Article 29)

The Registration of Persons Ordinance Repeal Ordinance 1965 (No. 2 of 1965) repealed the Registration of Persons Ordinance 1955 of the Colony of Singapore which had been in force in the Territory. The effect is the abolition both of requirements for registration of persons resident in the Territory and the issuing of identity cards to them.

[1] Note furnished by Mr. J. O. Clark, Principal Legal Officer (Executive), Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights.*

NEW ZEALAND

NOTE [1]

TERRITORY OF COOK ISLANDS

1. *Cook Islands Constitution Act 1964*

This Act makes provision for self-government by the people of the Cook Islands and provides a constitution for the Cook Islands. The Act came into force on 28 July 1965.

2. *Cook Islands Constitution Amendment Act 1965*

This Act amends certain provisions of the Cook Islands Constitution Act 1964.

3. *Cook Islands Amendment Act 1964*

This Act deals with the executive and legislative government of Niue. The Act came into force on the same date as the Cook Islands Constitution Act 1964.

4. *Cook Islands Amendment Act 1965*

This Act amends the provisions relating to nationality and residential qualifications of electors and candidates in the Cook Islands.

5. *Cook Islands Amendment Act (No. 2) 1965*

This Act makes miscellaneous amendments in the Cook Islands Amendment Act 1964.

6. *Cook Islands Legislative Assembly Regulations 1965*

These regulations relate to the election of members to the Cook Islands Legislative Assembly.

[1] Note furnished by the Government of New Zealand.

THE CONSTITUTION OF THE COOK ISLANDS [2]

...

PART III

THE LEGISLATIVE GOVERNMENT OF THE COOK ISLANDS

The Legislative Assembly

27. *Legislative Assembly of the Cook Islands*—(1) There shall be a Legislative Assembly to be called the Legislative Assembly of the Cook Islands.

(2) The Legislative Assembly shall consist of twenty-two members, to be elected by secret ballot under a system of universal suffrage . . . .

(3) Subject to the provisions of this Article and of Article 28 hereof, the qualifications and disqualification of electors and candidates, the mode of electing members of the Legislative Assembly, and the terms and conditions of their membership shall be as prescribed by law.

28. *Nationality and residential qualifications of electors and candidates*—(1) Without limiting the provisions of any law prescribing any additional qualifications, a person shall be qualified to be an elector for the election of members of the Legislative Assembly or to be a candidate at any such election, if, and only if—

(*a*) He is a British subject; and

(*b*) In the case of an elector, he has been ordinarily resident in the Cook Islands throughout the period of twelve months immediately preceding his application for enrolment; and

(*c*) In the case of a candidate, he has been ordinarily resident in the Cook Islands throughout the period of three years immediately preceding his nomination as a candidate.

(2) For the purposes of this Article a person shall be deemed to be ordinarily resident in the Cook Islands if, and only if—

(*a*) He is actually residing in the Cook Islands; or

(*b*) Having been actually resident in the Cook Islands with the intention of residing therein indefinitely, he is outside the Cook Islands but has, and has had ever since he left the Cook Islands, an intention to

[2] Text appears in the Schedule to the Cook Islands Constitution Act 1964, printed under the authority of the New Zealand Government, by R. E. Owen, Government Printer—1964.

return and reside therein indefinitely: Provided that any person who has been outside the Cook Islands continuously for any period of more than three years otherwise than for the purpose of undergoing a course of education or of technical training or instruction during the whole or substantially the whole of that period, shall be deemed not to have been actually resident in the Cook Islands during that period with the intention of residing therein indefinitely.

...

40. *No property to be taken compulsorily without compensation*—(1) No property shall be taken possession of compulsorily, and no right over or interest in any property shall be acquired compulsorily, except under the law which, of itself or when read with any other laws—

(*a*) Requires the payment within a reasonable time of adequate compensation therefor; and

(*b*) Gives to any person claiming that compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court; and

(*c*) Gives to any party to proceedings in the High Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing in this Article shall be construed as affecting any general law—

(*a*) For the imposition or enforcement of any tax, rate, or duty; or

(*b*) For the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence; or

(*c*) Relating to leases, tenancies, mortgages, charges, bills of sale, or any other rights or obligations arising out of contracts; or

(*d*) Relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of infants or persons suffering under some physical or mental disability, of deceased persons, and of companies, other corporate bodies and unincorporated societies, in the course of being wound up; or

(*e*) Relating to the execution of judgments or orders of courts; or

(*f*) Providing for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants, or animals; or

(*g*) Relating to trusts and trustees; or

(*h*) Relating to the limitation of actions; or

(*i*) Relating to property in statutory corporations; or

(*j*) Relating to the temporary taking of possession of property for the purposes of any examination, investigation or inquiry; or

(*k*) Providing for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas.

41. *Power of Legislative Assembly to repeal or amend this Constitution*—(1) No Bill repealing or amending or modifying or extending this Constitution or any provision thereof or making any provision inconsistent with any provision of this Constitution shall be deemed to have been passed by the Assembly, unless—

(*a*) At both the final vote thereon and the vote preceding that final vote it receives the affirmative votes of not less than two-thirds of the total membership (including vacancies) of the Legislative Assembly; and

(*b*) There is an interval of not less than ninety days between the date on which that final vote was taken and the date on which the preceding vote was taken;

and no such Bill shall be presented to the Council of State for assent unless it is accompanied by a certificate under the hand of the Speaker to that effect.

...

46. *Power of New Zealand Parliament to legislate for the Cook Islands*—(1) No Act, and no provision of any Act, of the Parliament of New Zealand passed on or after Constitution Day shall extend or be deemed to extend to the Cook Islands as part of the law of the Cook Islands, unless—

(*a*) The passing of that Act or the making of that provision, so far as it extends to the Cook Islands, has been requested and consented to by the Government of the Cook Islands; and

(*b*) It is expressly declared in that Act that the Government of the Cook Islands has requested and consented to the enactment of that Act or of that provision.

(2) Every such request and consent shall be made and given by resolution of the Legislative Assembly or, if the Assembly is not sitting at the time when the request and consent are made and given, by the Council of State, acting on the advice of the Cabinet.

PART IV

THE JUDICIARY

The High Court of the Cook Islands

47. *High Court established*—(1) There shall be a Court of record, to be called the High Court of the Cook Islands, for the administration of justice throughout those islands.

(2) Except as provided in this Constitution or by law, the High Court shall have all such jurisdiction (both civil and criminal) as may be

necessary to administer the law in force in the Cook Islands.

48. *Judges and Commissioners of the High Court*—(1) The High Court shall consist of such Judges and Commissioners of that Court as are from time to time appointed under the provisions of this Constitution.

...

(3) A person shall not be qualified for appointment as a Judge or Commissioner of the High Court unless he possesses such qualifications as the Council of State, acting on the advice of the Judicial Service Commission, prescribes.

...

PART V

THE PUBLIC REVENUES OF THE COOK ISLANDS

68. *Restriction on taxation*—No taxation shall be imposed except by law.

...

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

BASUTOLAND

THE CONSTITUTION OF BASUTOLAND[1]

Chapter I

PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

1. (1) Whereas every person in Basutoland is entitled, whatever his race, tribe, place of origin or residence, political opinions, colour, creed or sex, to fundamental human rights and freedoms, that is to say, to each and all of the following:

(*a*) the right to life;

(*b*) the right to personal liberty;

(*c*) freedom of movement and residence;

(*d*) freedom from inhuman treatment;

(*e*) freedom from slavery and forced labour;

(*f*) freedom from arbitrary search or entry;

(*g*) the right to respect for private and family life;

(*h*) the right to a fair trial of criminal charges against him and to a fair determination of his civil rights and obligations;

(*i*) freedom of conscience;

(*j*) freedom of expression;

(*k*) freedom of assembly and association;

(*l*) freedom from arbitrary seizure of property;

(*m*) freedom from discrimination; and

(*n*) the right to equality before the law and the equal protection of the law,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

(2) For the avoidance of doubt and without prejudice to any other provision of this Constitution it is hereby declared that the provisions of this Chapter shall, except where the context otherwise requires, apply as well in relation to things done or omitted to be done by persons acting in a private capacity (whether by virtue of any written law or otherwise) as in relation to things done or omitted to be done by or on behalf of the Government of Basutoland or by any person acting in the performance of the functions of any public office or any public authority.

2. (1) Every person shall have the right to life, that is to say, he shall not be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Basutoland of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is necessary in the circumstances of the case:

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

3. (1) Every person shall be entitled to personal liberty, that is to say, he shall not be arrested or detained save as may be authorised by law in any of the following cases, that is to say:

(*a*) in execution of the sentence or order of a court, whether established for Basutoland or for some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

[1] Text appears in Schedule 2 to the Basutoland Order 1965, published by Her Majesty's Stationery Office in 1965.

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Basutoland;

(*f*) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care and treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into Basutoland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Basutoland or for the purpose of restricting that person while he is being conveyed through Basutoland in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Basutoland or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Basutoland in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, the burden of proving that he has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained upon suspicion of his having committed, or being about to commit, a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Without prejudice to the generality of any other provision of this Constitution or any other law by virtue of which a person is entitled to redress for a contravention of this section, any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

4. (1) Every person shall be entitled to freedom of movement, that is to say, the right to move freely throughout Basutoland, the right to reside in any part of Basutoland, the right to enter Basutoland, the right to leave Basutoland and immunity from expulsion from Basutoland.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) for the imposition of restrictions in the interests of defence, public safety, public order, public morality or public health on the movement or residence within Basutoland of any person or any person's right to leave Basutoland:

Provided that a person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in this paragraph except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not restrict the movement or residence within Basutoland or the right to leave Basutoland of the person concerned to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in this paragraph; or

(*b*) for the imposition of restrictions, by order of a court, on the movement or residence within Basutoland of any person or on any person's right to leave Basutoland either in consequence of his having been convicted of a criminal offence under the law of Basutoland or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to

trial or for proceedings relating to his extradition or lawful removal from Basutoland;

(*c*) for the imposition of restrictions on the freedom of movement of any person who does not belong to Basutoland;

(*d*) for the imposition of restrictions on the acquisition or use by any person of land or other property in Basutoland;

(*e*) for the imposition of restrictions upon the movement or residence within Basutoland or on the right to leave Basutoland of any public officer;

(*f*) for the removal of a person from Basutoland to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he has been convicted under the law of Basutoland; or

(*g*) for the imposition of restrictions on the right of any person to leave Basutoland that are necessary in a practical sense in a democratic society in order to secure the fulfilment of any obligations imposed on that person by law.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such a request, as the case may be, his case shall be investigated by an independent and impartial tribunal presided over by a person appointed by the Chief Justice:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction that is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any investigation by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

(6) Nothing contained in or done under the authority of any provision of Basuto customary law shall be held to be inconsistent with or in contravention of this section to the extent that that provision authorises the imposition of restrictions upon may person's freedom to reside in any part of Basutoland.

(7) For the purposes of subsection (3)(*c*) of this section a person shall be deemed to belong to Basutoland if, and shall not be so deemed unless, he is:

(*a*) an African born in Basutoland; or

(*b*) an African whose father was born in Basutoland and who, when he first entered Basutoland, had not attained the age of 16 years (or who, when he first seeks to enter Basutoland in reliance on this section, has not attained that age); or

(*c*) a woman who is married to, or has been married to, a person specified in paragraph (*a*) or paragraph (*b*) of this subsection.

5. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Basutoland immediately before the coming operation of this Constitution.

6. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably required in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a military of air force, any labour that that person is required by law to perform in place of such service;

(*d*) any labour required during any period when Her Majesty is at war or a declaration of emergency under section 19 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required by law as part of reasonable and normal communal or other civic obligations.

7. (1) Every person shall be entitled to freedom from arbitrary search or entry, that is to say, he shall not (except with his own consent) be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the

authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of mineral resources or the development or utilisation of any other property in such a manner as to promote the public benefit;

(*b*) for the purpose of protecting the rights or freedoms of other persons;

(*c*) that authorises an officer or agent of Motlotlehi's Government or of a local government authority or of a body corporate established by law for public purposes to enter on the premises of any person for the purpose of inspecting those premises or anything thereon in connection with any tax, rate or due or for the purpose of carrying out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(*d*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the entry upon any premises by order of a court.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the freedom guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (*a*) of subsection (2) of this section or for any of the purposes specified in paragraph (*b*), paragraph (*c*) or paragraph (*d*) of that subsection.

8. (1) Every person shall be entitled to respect for his private and family life and his home.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) in the interests of defence, public safety, public order, public morality or public health;

(*b*) for the purpose of protecting the rights and freedoms of other persons.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the right guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (*a*) of subsection (2) of this section or for the purpose specified in paragraph (*b*) of that subsection.

9. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in adequate detail, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within reasonable time.

(9) Except with the agreement of all parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(*a*) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(*b*) may by law be empowered or required to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(*a*) subsection (2)(*a*) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) subsection (2)(*e*) of this section to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of accused persons are to be paid their expenses out of public funds; or

(*c*) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (*d*) and (*e*) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in subsection (2) (*d*) of this section shall be construed as entitling a person to legal representation at public expense.

(14) In this section "criminal offence" means a criminal offence under the law of Basutoland.

10. (1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.

(6) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (5) of this section except to the extent to which he satisfies the court that provision or, as the case may be, the thing done under the authority thereof does not abridge the rights and freedoms

guaranteed by this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (*a*) of subsection (5) of this section of for the purpose specified in paragraph (*b*) of that subsection.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

11. (1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(*c*) for the purpose of imposing restrictions upon public officers.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the freedom guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (*a*) of subsection (2) of this section or for any of the purposes specified in paragraph (*b*) or paragraph (*c*) of that subsection.

12. (1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of assembly and association, that is to say, freedom to assemble and associate with other persons and in particular to form or belong to trade unions and other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons; or

(*c*) for the purpose of imposing restrictions upon public officers.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the rights and freedoms guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (*a*) of subsection (2) of this section or for any of the purposes specified in paragraph (*b*) or paragraph (*c*) of that subsection.

13. (1) No property, movable or immovable, shall be taken possession of compulsorily, and no interest in or right over any such property shall be compulsorily acquired, except where the following conditions are satisfied, that is to say:

(*a*) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit; and

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for:

(*a*) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and

(*b*) the purpose of obtaining prompt payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (*a*) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section:

(*a*) to the extent that the law in question makes provision that is necessary in a practical sense in a democratic society for the taking of possession or acquisition of any property, interest or right:

(i) in satisfaction of any tax, duty, rate, or other impost;

(ii) by way of penalty for breach of the law, whether under civil process of after conviction of a criminal offence under the law of Basutoland;

(iii) as an incident of a valid contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to prescription or limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purpose of carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out); or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of the following property (including an interest in or right over property), that is to say:

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of 21 years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by Parliament.

14. (1) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence, sex, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law to the extent that that law makes provision:

(*a*) with respect to persons who do not belong to Basutoland; or

(*b*) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description; or

(*c*) for the application of Basuto customary

law with respect to any matter in the case of persons who, under that law, are subject to that law; or

(*d*) for the appropriation of public revenues or other public funds; or

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be made subject to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin or residence, sex, political opinions, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) No person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 4, 7, 8, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by paragraph (*a*) or paragraph (*c*) of section 4(3), section 7(2), section 8(2), section 10(5), section 11(2) or section 12(2), as the case may be.

(9) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(10) For the purposes of subsection (4)(*a*) of this section, a person shall be deemed to belong to Basutoland if, and shall not be so deemed unless, he is a British subject and:

(*a*) was born in Basutoland or of parents who at the time of his birth were ordinarily resident in Basutoland; or

(*b*) has been ordinarily resident in Basutoland continuously for a period of seven years or more and since the completion of such period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of the Commonwealth; or

(*c*) has obtained the status of a British subject under the British Nationality Act 1948 by virtue of his having been naturalised in Basutoland before that Act came into force or by virtue of his having been naturalised or registered as a citizen of the United Kingdom and Colonies in Basutoland under that Act; or

(*d*) is a woman who is married to, or has been married to, a person to whom any of the foregoing paragraphs of this subsection applies; or

(*e*) is the child, stepchild or child adopted in a manner recognised by law, under the age of eighteen years, of a person to whom any of the foregoing paragraphs of this subsection applies.

(11) The provisions of this section shall be without prejudice to the generality of section 15 of this Constitution.

15. Every person shall be entitled to equality before the law and to the equal protection of the law.

16. (1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 3, section 14 or section 15 of this Constitution to the extent that the Act authorises the taking during any period when Her Majesty is at war or when a declaration of emergency under section 19 of this Constitution is in force of measures that are necessary in a practical sense in a democratic society for dealing with the situation that exists in Basutoland during that period.

(2) Nothing contained in or done under the authority of a regulation made under the Emergency Powers Order in Council 1939, as from time to time amended, shall be held to be inconsistent with or in contravention of section 3, section 4, section 7, section 8, section 10, section 11, section 12, section 14 or section 15 of this Constitution to the extent that the regulation in question authorises the taking during any period when Part II of that Order in Council is in operation of measures that are necessary in a practical sense in a democratic society to deal with the situation that exists in Basutoland during that period.

17. (1) When a person is detained by virtue of any such law as is referred to in section 16 of this Constitution the following provisions shall apply, that is to say:

(*a*) he shall, as soon as reasonably practicable after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be investigated by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the investigation of the case of the detained person; and

(*e*) at the hearing of his case by the tribunal appointed for the investigation of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any investigation by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1)(*d*) or subsection (1)(*e*) of this section shall be construed as entitling a person to legal representation at public expense.

18. (1) If any person alleges that any of the provisions of sections 1 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction:

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section.

and may make such orders, issue such process and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 1 to 17 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 1 to 17 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Hight Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 112 of this Constitution to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

19. (1) The Prime Minister may, by proclamation which shall be published in the Gazette, declare that a state of emergency exists for the purposes of this Chapter.

(2) Every declaration of emergency shall lapse at the expiration of fourteen days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of each House of Parliament.

(3) A declaration of emergency may at any time be revoked by the Prime Minister by proclamation which shall be published in the Gazette.

(4) A declaration of emergency that has been approved by a resolution of each House of Parliament in pursuance of subsection (2) of this section shall, subject to the provisions of subsection (3) of this section, remain in force so long as those resolutions remain in force and no longer.

(5) A resolution of either House of Parliament passed for the purposes of this section shall remain in force for six months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, each extension not exceeding six months from the date of the resolution effecting the extension.

(6) Any provision of this section that a declaration of emergency shall lapse or cease to be in

force at any particular time is without prejudice to the making of a further such declaration whether before of after that time.

(7) Before exercising his powers under this section, the Prime Minister shall whenever practicable consult with Motlotlehi's Privy Council.

(8) Motlotlehi may summon the two Houses of Parliament to meet for the purposes of this section notwithstanding that Parliament then stands dissolved, and the persons who were members of either House immediately before the dissolution shall be deemed, for those purposes, still to be members of that House, but, subject to the provisions of sections 40(4) and 42(4) of this Constitution, neither House shall, when summoned by virtue of this subsection, transact any business other than debating and voting upon resolutions for the purposes of this section.

...

(2) Nothing contained in any of the provisions of section 4, section 13 or section 14 of this Constitution shall be construed as affecting any law for the time being in force relating to the allocation of land or the grant of any interest or right in or over land or as entitling any person to any greater such interest or right than he would otherwise have and, without prejudice to the generality of the foregoing, nothing done under the authority of Chapter VI of this Constitution shall be held to be inconsistent with or in contravention of any of the provisions of any of those sections.

(3) In relation to any person who is a member of a disciplined force raised under a law made by any legislature in Basutoland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 5, and 6.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Basutoland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

Chapter II

MOTLOTLEHI

21. (1) There shall be a Paramount Chief of Basutoland who shall be styled Motlotlehi and who shall take precedence over all persons in Basutoland other than Her Majesty.

(2) Motlotlehi shall do all things that belong to his office in accordance with the provisions of this Constitution and of all other laws for the time being in force.

(3) The person holding the office of Paramount Chief under the Basutoland (Constitution) Order in Council 1959 immediately before the coming into operation of this Constitution is hereby recognised and confirmed as the holder of the office of Paramount Chief as from the commencement of this Constitution.

...

Chapter IV

PARLIAMENT

Part 1

Composition of Parliament

33. There shall be a Parliament which shall consist of Her Majesty, a Senate and a National Assembly.

34. The Senate shall consist of the twenty-two Principal Chiefs and Ward Chiefs and eleven other Senators for the time being nominated in that behalf by Motlotlehi:

Provided that a Principal Chief or a Ward Chief may, by notice in writing to the President of the Senate, designate any other person to be a Senator in his place either generally or for any sitting or sittings of the Senate specified in the notice.

35. The National Assembly shall consist of 60 members elected in accordance with the provisions of this Constitution.

36. (1) Basutoland shall, in accordance with the provisions of section 46 of this Constitution, be divided into constituencies and each constituency shall elect one member to the National Assembly in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) Subject to the provisions of subsections (3) and (4) of this section, every person who, at the date of his application to be registered under a law in that behalf:

(*a*) is a British subject or a British protected person or a citizen of the Republic of Ireland; and

(*b*) has attained the age of twenty-one years; and

(*c*) possesses such residence qualifications as may be prescribed by Parliament,

shall be qualified to be registered as an elector in elections to the National Assembly under a law in that behalf; and no other person may be so registered.

...

37. (1) Subject to the provisions of section 38 of this Constitution, a person shall be qualified to be nominated as a Senator by Motlotlehi or designated by a Principal Chief or a Ward Chief as a Senator in his place if, and shall not be so qualified unless, at the date of his nomination or designation, he is a British subject.

(2) Subject to the provisions of section 38 of this Constitution, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be so qualified unless, at the date of his nomination for election, he:

(*a*) is a British subject; and

(*b*) is registered in some constituency as an elector in elections to the National Assembly and is not disqualified from voting in such elections; and

(*c*) is able to speak and, unless incapacitated by blindness or other physical cause, to read and write either the English or the Sesotho language well enough to take an active part in the proceedings of the National Assembly.

38. (1) No person shall be qualified to be nominated as a Senator by Motlotlehi or designated by a Principal Chief of a Ward Chief as a Senator in his place and no person shall be qualified to be elected as a member of the National Assembly if, at the date of his nomination or designation or, as the case may be, at the date of his nomination for election, he:

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to any foreign power or state; or

(*b*) is under sentence of death imposed on him by any court in Basutoland; or

(*c*) is, under any law in force in Basutoland, adjudged or otherwise declared to be of unsound mind; or

(*d*) is an unrehabilitated insolvent, having been adjudged or otherwise declared insolvent under any law in force in Basutoland; or

(*e*) subject to such exceptions and limitations as may be prescribed by Parliament, has any such interest in any such government contract as may be so prescribed.

(2) Parliament may provide that a person who, at the date of his nomination for election, holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the National Assembly or the compilation of any register of electors for the purposes of such an election shall not be qualified to be elected as a member of the National Assembly.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(4) Parliament may provide that, subject to such exceptions and limitations as may be prescribed by Parliament, a person shall not be qualified to be elected as a member of the National Assembly if:

(*a*) he holds or acts in any office or appointment that is so prescribed;

(*b*) he is a member of any military or air force that is so prescribed; or

(*c*) he is a member of a police force.

(5) No person shall be qualified to be elected as a member of the National Assembly who, at the date of his nomination for election as such a member, is a Principal Chief or a Ward Chief or is otherwise a Senator.

(6) In subsection (1)(*e*) of this section "government contract" means any contract made with Motlotlehi's Government or with a department of that Government or with an officer of that Government contracting as such.

...

BECHUANALAND

THE CONSTITUTION OF BECHUANALAND[2]

Chapter I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

1. Whereas every person in Bechuanaland is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following namely:

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

2.(1) No person shall be deprived of his life intentionally save in execution of the sentence

[2] Text appears in the Schedule to the Bechuanaland Protectorate (Constitution) Order 1965, published as *Statutory Instruments*, 1965, No. 134, by Her Majesty's Stationery Office, London.

of a court in respect of a criminal offence under the law in force in Bechuanaland of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

3. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

(*a*) in execution of the sentence or order of a court, whether established for Bechuanaland or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court of record punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Bechuanaland;

(*f*) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into Bechuanaland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Bechuanaland or for the purpose of restricting that person while he is being conveyed through Bechuanaland in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Bechuanaland or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Bechuanaland in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Bechuanaland,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

4. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(*d*) any labour required during any period of

public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

5. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Bechuanaland immediately before the coming into operation of this Constitution.

6. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say:

(*a*) the taking of possession or acquisition is necessary or expedient:

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community; and

(*b*) provision is made by a law applicable to that taking of possession or acquisition:

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to the High Court direct or on appeal from any other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Bechuanaland.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that the law in question authorises:

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(*b*) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section:

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property:

(i) in satisfaction of any tax, rate or due;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law in force in Bechuanaland;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of:

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind, a person who has not attained the age of twenty-one years, a prodigal, or a person who is absent from Bechuanaland, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person declared to be insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by the Legislature of Bechuanaland.

7. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(*c*) that authorises an officer or agent of the Government of Bechuanaland, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or duty or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(*d*) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

8. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established or recognised by law.

(2) Every person who is charged with a criminal offence:

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been

tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established or recognised by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or

(*b*) may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(*a*) subsection (2)(*a*) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) subsection (2)(*d*) of this section to the extent that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under African customary law (being proceedings against any person who, under that law, is subject to that law);

(*c*) subsection (2)(*e*) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*d*) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law;

(*e*) subsection (8) of this section to the extent that the law in question authorises a court to convict a person of a criminal offence under any African customary law to which, by virtue of that law, such person is subject.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2)(*d*) and (*e*) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section:

"criminal offence" means a criminal offence under the law in force in Bechuanaland;

"legal representative" means a person entitled to practise in Bechuanaland as an advocate or attorney.

9. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part

in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required:

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(*b*) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

12. (1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Bechuanaland, the right to reside in any part of Bechuanaland, the right to enter Bechuanaland and immunity from expulsion from Bechuanaland.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(*a*) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Bechuanaland, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society;

(*b*) for the imposition of restrictions on the freedom of movement of any person who does not belong to Bechuanaland;

(*c*) for the imposition of restrictions on the entry into or residence within defined areas of Bechuanaland of persons who are not Bushmen to the extent that such restrictions are reasonably required for the protection or well-being of Bushmen;

(*d*) for the imposition of restrictions upon the movement or residence within Bechuanaland of public officers; or

(*e*) for the removal of a person from Bechuanaland to be tried outside Bechuanaland for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law

in force in Bechuanaland of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Bechuanaland, appointed by the Chief Justice:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

13. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision:

(*a*) for the appropriation of public revenues or other public funds;

(*b*) with respect to persons who do not belong to Bechuanaland;

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(*d*) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9 10, 11 and 12 of this Constitution, being such a restriction as is authorised by sections 7(2), 9(5), 10(2), 11(2) or 12(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section:

(*a*) if that law was in force immediately before the coming into operation of this Constitution and has continued in force at all times since the coming into operation of this Constitution; or

(*b*) to the extent that the law repeals and re-enacts any provision which has been contained in any enactment at all times since immediately before the coming into operation of this Constitution.

14. (1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939, as amended, shall be held to be inconsistent with or in contravention of sections 3, 4(2), 7, 9, 10, 11, 12 or 13 of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained

in pursuance only of such a regulation as is referred to in subsection (1) of this section so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, qualified to be enrolled as an advocate in Bechuanaland, appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

15. (1) Subject to the provisions of subsection (6) of this section, if any person alleges that any of the provisions of sections 1 to 14 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction:

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section;

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 1 to 14 (inclusive) of this Constitution.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 1 to 14 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal for Basutoland, Bechuanaland and Swaziland:

Provided that no appeal shall lie from a determination of the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) The Legislature of Bechuanaland may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

...

16. (2) In this Chapter "a period of public emergency" means any period during which:

(*a*) Her Majesty is at war;

(*b*) Part II of the Emergency Powers Order in Council 1939, as amended, is in force in Bechuanaland or any part thereof.

(3) For the purposes of this Chapter a person shall be deemed to belong to Bechuanaland if he is a British subject or a British protected person and:

(*a*) was born in Bechuanaland or of parents who at the time of his birth were ordinarily resident in Bechuanaland; or

(*b*) has been ordinarily resident in Bechuanaland continuously for a period of seven years or more and since the completion of such period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of the Commonwealth; or

(*c*) has obtained the status of a British subject by reason of the grant by the Commissioner (or by the High Commissioner or other competent authority in Bechuanaland) of a certificate of naturalisation under the British Nationality and Status of Aliens Act 1914, or the British Nationality Act 1948; or

(*d*) is the wife of a person to whom any of the foregoing paragraphs applies not living apart from such person under a decree of court or a deed of separation; or

(*e*) is the child, stepchild, or child adopted in a manner recognised by law under the age of eighteen years of a person to whom any of the foregoing paragraphs applies; or

(*f*) is a member of any other class of persons that may be prescribed by any law enacted under this Constitution.

(4) In relation to any person who is a member of a disciplined force raised under a law enacted by the Legislature of Bechuanaland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Bechuanaland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

...

Chapter IV

THE LEGISLATURE

Part 1

Composition

44. There shall be a Legislature for Bechuanaland which shall consist of Her Majesty and a Legislative Assembly.

45. (1) The Legislative Assembly shall consist of:

(*a*) thirty-one Elected Members;

(*b*) four Specially Elected Members; and

(*c*) the Attorney-General.

(2) If a person who is not a member of the Legislative Assembly is elected to the office of Speaker of the Assembly that person shall, by virtue of holding that office, be a member of the Assembly in addition to the members referred to in subsection (1) of this section.

...

48. Subject to the provisions of section 49 of this Constitution a person shall be qualified to be elected as an Elected Member or a Specially Elected Member of the Legislative Assembly if, and shall not be qualified to be so elected unless, he:

(*a*) is qualified for registration as a voter and is so registered; and

(*b*) is able to speak, and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the Assembly.

49. (1) No person shall be qualified to be elected as an Elected Member or a Specially Elected Member of the Legislative Assembly who:

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(*b*) has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;

(*c*) is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Bechuanaland;

(*d*) is a member of the House of Chiefs;

(*e*) subject to such exceptions as may be prescribed by the Legislature of Bechuanaland, holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months; or

(*f*) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court.

(2) No person shall be qualified to be elected a member of the Legislative Assembly who holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the Assembly or the compilation or revision of any electoral register for the purposes of such elections.

(3) The Legislature of Bechuanaland may provide that a person shall not be qualified for election to the Legislative Assembly for such period (not exceeding five years) as may be prescribed if he is convicted of any such offence connected with elections to the Assembly as may be prescribed.

(4) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms, and no account shall be taken of a sentence of imprisonment imposed as an alternative or in default of the payment of a fine.

...

53. (1) The Elected Members of the Legislative Assembly shall be directly elected in the manner provided by, or in pursuance of, any law for the time being in force in Bechuanaland.

(2) The Specially Elected Members of the Legislative Assembly shall be elected by the Elected Members of the Assembly in accordance with the provisions of the schedule to this Constitution.

54. (1) A person who:

(*a*) is a British subject or a British protected person; and

(*b*) has attained the age of twenty-one years; and

(*c*) has either resided in Bechuanaland for a continuous period of at least twelve months immediately preceding the date on which he applies for registration as a voter or was born in Bechuanaland and is domiciled in Bechuanaland on the date on which he applies for registration as a voter,

shall, unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by any law, to be registered as a voter for the purposes of elections of Elected Members of the Legislative Assembly.

(2) A person who has not continuously resided in Bechuanaland for the period mentioned in paragraph (*c*) of subsection (1) of this section but has during the whole of such period retained his residence (or if he has more than one residence, his principal residence) in Bechuanaland and has been absent therefrom for some temporary purpose only shall be deemed for the purposes of the said paragraph (*c*) to have been resident in Bechuanaland during such absence.

(3) (*a*) A person shall be entitled to be registered as a voter:

(i) in the constituency in which he has his residence, or if he has more than one residence in Bechuanaland in the constituency in which he has his principal residence; or

(ii) in the case of a person who does not have a residence in Bechuanaland, in the constituency in which he was born.

(*b*) A person shall be entitled to be registered as a voter in one constituency only.

...

PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

RECOMMENDATION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES

Adopted by General Assembly resolution 2018 (XX) of 1 November 1965

2018 (XX). Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

The General Assembly,

Recognizing that the family group should be strengthened because it is the basic unit of every society, and that men and women of full age have the right to marry and to found a family, that they are entitled to equal rights as to marriage and that marriage shall be entered into only with the free and full consent of the intending spouses, in accordance with the provisions of article 16 of the Universal Declaration of Human Rights,

Recalling its resolution 843 (IX) of 17 December 1954,

Recalling further article 2 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, which makes certain provisions concerning the age of marriage, consent to marriage and registration of marriages,

Recalling also that Article 13, paragraph 1 b, of the Charter of the United Nations provides that the General Assembly shall make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling likewise that, under Article 64 of the Charter, the Economic and Social Council may make arrangements with the Members of the United Nations to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly,

1. *Recommends* that, where not already provided by existing legislative or other measures, each Member State should take the necessary steps, in accordance with its constitutional processes and its traditional and religious practices, to adopt such legislative or other measures as may be appropriate to give effect to the following principles:

Principle I

(*a*) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person, after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

(*b*) Marriage by proxy shall be permitted only when the competent authorities are satisfied that each party has, before a competent authority and in such manner as may be prescribed by law, fully and freely expressed consent before witnesses and not withdrawn such consent.

Principle II

Member States shall take legislative action to specify a minimum age for marriage, which in any case shall not be less than fifteen years of age; no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Principle III

All marriages shall be registered in an appropriate official register by the competent authority.

2. *Recommends* that each Member State should bring the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages contained in the present resolution before the authorities competent to enact legislation or to take other action at the earliest practicable moment and, if possible, no later than eighteen months after the adoption of the Recommendation;

3. *Recommends* that Member States should inform the Secretary-General, as soon as possible after the action referred to in paragraph 2 above, of the measures taken under the present Recommendation to bring it before the competent authority or authorities, with particulars regarding the authority or authorities considered as competent;

4. *Recommends further* that Member States should report to the Secretary-General at the end of three years, and thereafter at intervals of five years, on their law and practice with regard to the matters dealt with in the present Recommendation, showing the extent to which effect has been given or is proposed to be given to the provisions of the Recommendation and such modifications as have been found or may be found necessary in adapting or applying it;

5. *Requests* the Secretary-General to prepare for the Commission on the Status of Women a document containing the reports received from Governments concerning methods of implementing the three basic principles of the present Recommendation;

6. *Invites* the Commission on the Status of Women to examine the reports received from Member States pursuant to the present Recommendation and to report thereon to the Economic and Social Council with such recommendations as it may deem fitting.

DECLARATION ON THE PROMOTION AMONG YOUTH OF THE IDEALS OF PEACE, MUTUAL RESPECT AND UNDERSTANDING BETWEEN PEOPLES

Adopted by General Assembly resolution 2037 (XX) of 7 December 1965

Principle I

Young people shall be brought up in the spirit of peace, justice, freedom, mutual respect and understanding in order to promote equal rights for all human beings and all nations, economic and social progress, disarmament and the maintenance of international peace and security.

Principle II

All means of education, including as of major importance the guidance given by parents or family, instruction and information intended for the young should foster among them the ideals of peace, humanity, liberty and international solidarity and all other ideals which help to bring peoples closer together, and acquaint them with the role entrusted to the United Nations as a means of preserving and maintaining peace and promoting international understanding and co-operation.

Principle III

Young people shall be brought up in the knowledge of the dignity and equality of all men, without distinction as to race, colour, ethnic origins or beliefs, and in respect for fundamental human rights and for the right of peoples to self-determination.

Principle IV

Exchanges, travel, tourism, meetings, the study of foreign languages, the twinning of towns and universities without discrimination and similar activities should be encouraged and facilitated among young people of all countries in order to bring them together in educational, cultural and sporting activities in the spirit of this Declaration.

Principle V

National and international associations of young people should be encouraged to promote the purposes of the United Nations, particularly international peace and security, friendly relations among nations based on respect for the equal sovereignty of States, the final abolition of colonialism and of racial discrimination and other violations of human rights.

Youth organizations in accordance with this Declaration should take all appropriate measures within their respective fields of activity in order to make their contribution without any discrimination to the work of educating the young generation in accordance with these ideals.

Such organizations, in conformity with the principle of freedom of association, should promote the free exchange of ideas in the spirit of the principles of this Declaration and of the purposes of the United Nations set forth in the Charter.

All youth organizations should conform to the principles set forth in this Declaration.

Principle VI

A major aim in educating the young shall be to develop all their faculties and to train them to acquire higher moral qualities, to be deeply attached to the noble ideals of peace, liberty, the dignity and equality of all men, and imbued with respect and love for humanity and its creative achievements. To this end the family has an important role to play.

Young people must become conscious of their responsibilities in the world they will be called upon to manage and should be inspired with confidence in a future of happiness for mankind.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Opened for Signature and Ratification on 7 March 1966 [1]

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of and kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 [General Assembly resolution 1514 (XV)] has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 [General Assembly resolution 1904 (XVIII)] solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person.

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of *apartheid,* segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamen-

[1] The Convention is annexed to resolution 1406 (XX) of the General Assembly, adopted on 21 December 1965.

tal freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(*a*) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(*b*) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(*c*) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(*d*) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(*e*) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia:*

(*a*) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(*b*) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organization or activities as an offence punishable by law;

(*c*) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(*a*) The right to equal treatment before the tribunals and all other organs administering justice;

(*b*) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;

(*c*) Political rights, in particular the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(*d*) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(*e*) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(*f*) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts, of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (*a*) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

(*b*) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (*a*) within one year after the entry into force of the Convention for the State concerned; and (*b*) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (*a*) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention.

(*b*) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article

may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (*a*) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications.

(*b*) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (*a*) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged.

(*b*) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (*a*) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies.

(*b*) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in sub-paragraph (*a*) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (*a*) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which

has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

(*a*) Signatures, ratifications and accessions under articles 17 and 18;

(*b*) The date of entry into force of this Convention under article 19;

(*c*) Communications and declarations received under articles 14, 20 and 23;

(*d*) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

INTERNATIONAL TELECOMMUNICATION UNION

INTERNATIONAL TELECOMMUNICATION CONVENTION

Adopted by the Plenipotentiary Conference of the International Telecommunication Union at Montreux on 12 November 1965 [1]

PREAMBLE

1. While fully recognizing the sovereign right of each country to regulate its telecommunication, the plenipotentiaries of the contracting Governments, with the object of facilitating relations and co-operation between the peoples by means of efficient telecommunication services, have agreed to conclude the following Convention.

2. The countries and groups of territories which become parties to the present Convention constitute the International Telecommunication Union.

CHAPTER I

COMPOSITION, PURPOSES AND STRUCTURE OF THE UNION

Article 1

COMPOSITION OF THE UNION

3. 1. The International Telecommunication Union shall comprise Members and Associate Members.

...

Article 2

RIGHTS AND OBLIGATIONS OF MEMBERS AND ASSOCIATE MEMBERS

12. 1. (1) All Members shall be entitled to participate in conferences of the Union and shall be eligible for election to any of its organs.

13. (2) Each Member shall have one vote at all conferences of the Union, at meetings of the International Consultative Committees in which it participates and, if it is a Member of the Administrative Council, at all sessions of that Council.

14. (3) Each Member shall also have one vote in all consultations carried out by correspondence.

15. 2. Associate Members shall have the same rights and obligations as Members of the Union, except that they shall not have the right to vote in any conference or other organ of the Union or to nominate candidates for membership of the International Frequency Registration Board. They shall not be eligible for election to the Administrative Council.

Article 3

SEAT OF THE UNION

16. The seat of the Union shall be at Geneva.

Article 4

PURPOSES OF THE UNION

17. 1. The purposes of the Union are:

(*a*) to maintain and extend international cooperation for the improvement and rational use of telecommunications of all kinds;

18. (*b*) to promote the development of technical facilities and their most efficient operation with a view to improving the efficiency of telecommunication services, increasing their usefulness and making them, so far as possible, generally available to the public;

19. (*c*) to harmonize the actions of nations in the attainment of those common ends.

20. 2. To this end, the Union shall in particular:

(*a*) effect allocation of the radio frequency spectrum and registration of radio frequency assignments in order to avoid harmful interference between radio stations of different countries;

21. (*b*) coordinate efforts to eliminate harmful interference between radio stations of different countries and to improve the use made of the radio frequency spectrum;

22. (*c*) foster collaboration among its Members and Associate Members with a view to the establishment of rates at levels as low as possible consistent with an efficient service and taking

[1] Text published by the General Secretariat of the International Telecommunication Union, Geneva, in *International Telecommunication Convention* (Montreux, 1965). The new Convention replaced the International Telecommunication Convention adopted by the Plenipotentiary Conference at Geneva in 1959, which had been in force since 1 January 1961.

into account the necessity for maintaining independent financial administration of telecommunication on a sound basis;

23. (*d*) foster the creation, development and improvement of telecommunication equipment and networks in new or developing countries by every means at its disposal, especially its participation in the appropriate programmes of the United Nations;

24. (*e*) promote the adoption of measures for ensuring the safety of life through the cooperation of telecommunication services;

25. (*f*) undertake studies, make regulations, adopt resolutions, formulate recommendations and opinions, and collect and publish information concerning telecommunication matters for the benefit of all Members and Associate Members.

...

CHAPTER II *

...

CHAPTER III

RELATIONS WITH THE UNITED NATIONS AND WITH INTERNATIONAL ORGANIZATIONS

Article 29

RELATIONS WITH THE UNITED NATIONS

272. 1. The relationship between the United Nations and the International Telecommunication Union is defined in the Agreement concluded between these two Organizations.

273. 2. In accordance with the provision of Article XVI of the above-mentioned Agreement, the telecommunication operating services of the United Nations shall be entitled to the rights and bound by the obligations of this Convention and of the Administrative Regulations annexed thereto. Accordingly, they shall be entitled to attend all conferences of the Union, including meetings of the International Consultative Committees, in a consultative capacity.

Article 30

RELATIONS WITH INTERNATIONAL ORGANIZATIONS

274. In furtherance of complete international coordination on matters affecting telecommunication, the Union shall cooperate with international organizations having related interests and activities.

* Deals with the application of the Convention and Regulations.

CHAPTER IV

GENERAL PROVISIONS RELATING TO TELECOMMUNICATIONS

Article 31

THE RIGHT OF THE PUBLIC TO USE THE INTERNATIONAL TELECOMMUNICATION SERVICE

275. Members and Associate Members recognize the right of the public to correspond by means of the international service of public correspondence. The services, the charges and the safeguards shall be the same for all users in each category of correspondence without any priority or preference.

Article 32

STOPPAGE OF TELECOMMUNICATIONS

276. 1. Members and Associate Members reserve the right to stop the transmission of any private telegram which may appear dangerous to the security of the State or contrary to their laws, to public order or to decency, provided that they immediately notify the office of origin of the stoppage of any such telegram or any part thereof, except when such notification may appear dangerous to the security of the State.

277. 2. Members and Associate Members also reserve the right to cut off any other private telecommunications which may appear dangerous to the security of the State or contrary to their law, to public order or to decency.

Article 33

SUSPENSION OF SERVICES

278. Each Member and Associate Member reserves the right to suspend the international telecommunication service for an indefinite time, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit, provided that it immediately notifies such action to each of the other Members and Associate Members through the medium of the Secretary-General.

Article 34

RESPONSIBILITY

279. Members and Associate Members accept no responsibility towards users of the international telecommunication services, particularly as regards claims for damages.

Article 35

SECRECY OF TELECOMMUNICATIONS

280. 1. Members and Associate Members agree to take all possible measures, compatible with the system of telecommunication used, with a view to ensuring the secrecy of international correspondence.

281. 2. Nevertheless, they reserve the right to communicate such correspondence to the competent authorities in order to ensure the application of their internal laws or the execution of international conventions to which they are parties.

Article 36

ESTABLISHMENT, OPERATION, AND PROTECTION OF TELECOMMUNICATION INSTALLATIONS AND CHANNELS

282. 1. Members and Associate Members shall take such steps as may be necessary to ensure the establishment, under the best technical conditions, of the channels and installations necessary to carry on the rapid and uninterrupted exchange of international telecommunications.

283. 2. So far as possible, these channels and installations must be operated by the methods and procedures which practical operating experience has shown to be the best. They must be maintained in proper operating condition and kept abreast of scientific and technical progress.

284. 3. Members and Associate Members shall safeguard these channels and installations within their jurisdiction.

285. 4. Unless other conditions are laid down by special arrangements, each Member and Associate Member shall take such steps as may be necessary to ensure maintenance of those sections of international telecommunication circuits within its control.

Article 37

NOTIFICATION OF INFRINGEMENTS

286. In order to facilitate the application of the provisions of Article 22 of this Convention, Members and Associate Members undertake to inform one another of infringements of the provisions of this Convention and of the Regulations annexed thereto.

...

Article 39

PRIORITY OF TELECOMMUNICATIONS CONCERNING SAFETY OF LIFE

288. The international telecommunication services must give absolute priority to all telecommunications concerning safety of life at sea, on land, in the air or in outer space, as well as to epidemiological telecommunications of exceptional urgency of the World Health Organization.

Article 40

PRIORITY OF GOVERNMENT TELEGRAMS AND TELEPHONE CALLS

289. Subject to the provisions of Articles 39 and 49 of this Convention, government telegrams shall enjoy priority over other telegrams when priority is requested for them by the sender. Government telephone calls may also be given priority, upon specific request and to the extent practicable, over other telephone calls.

Article 41

SECRET LANGUAGE

290. 1. Government telegrams and service telegrams may be expressed in secret language in all relations.

291. 2. Private telegrams in secret language may be admitted between all countries with the exception of those which have previously notified, through the medium of the Secretary-General, that they do not admit this language for those categories of correspondence.

292. 3. Members and Associate Members which do not admit private telegrams in secret language originating in or destined for their own territory must let them pass in transit, except in the case of suspension of service provided for in Article 33 of this Convention.

...

Article 44

SPECIAL AGREEMENTS

297. Members and Associate Members reserve for themselves, for the private operating agencies recognized by them and for other agencies duly authorized to do so, the right to make special agreements on telecommunication matters which do not concern Members and Associate Members in general. Such agreements, however, shall not be in conflict with the terms of this Convention or of the Regulations annexed thereto, so far as concerns the harmful interference which their operation might be likely to cause to the radio services of other countries.

Article 45

REGIONAL CONFERENCES, AGREEMENTS AND ORGANIZATIONS

298. Members and Associate Members reserve the right to convene regional conferences, to conclude regional agreements and to form regional organizations, for the purpose of settling telecommunication questions which are susceptible of being treated on a regional basis. Such agreements shall not be in conflict with this Convention.

CHAPTER V

SPECIAL PROVISIONS FOR RADIO

Article 46

RATIONAL USE OF THE RADIO FREQUENCY SPECTRUM

299. Members and Associate Members recognize that it is desirable to limit the number of

frequencies and the spectrum space used to the minimum essential to provide in a satisfactory manner the necessary services. To that end it is desirable that the latest technical advances be applied as soon as possible.

Article 47

INTERCOMMUNICATION

300. 1. Stations performing radiocommunication in the mobile service shall be bound, within the limits of their normal employment, to exchange radiocommunications reciprocally without distinction as to the radio system adopted by them.

301. 2. Nevertheless, in order not to impede scientific progress, the provisions of 300 shall not prevent the use of a radio system incapable of communicating with other systems, provided that such incapacity is due to the specific nature of such system and is not the result of devices adopted solely with the object of preventing intercommunication.

302. 3. Notwithstanding the provisions of 300, a station may be assigned to a restricted international service of telecommunication, determined by the purpose of such service, or by other circumstances independent of the system used.

Article 48

HARMFUL INTERFERENCE

303. 1. All stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Members or Associate Members or of recognized private operating agencies, or of other duly authorized operating agencies which carry on radio service, and which operate in accordance with the provisions of the Radio Regulations.

304. 2. Each Member or Associate Member undertakes to require the private operating agencies which it recognizes and the other operating agencies duly authorized for this purpose, to observe the provisions of 303.

305. 3. Further, the Members and Associate Members recognize the desirability of taking all practicable steps to prevent the operation of electrical apparatus and installations of all kinds from causing harmful interference to the radio services or communications mentioned in 303.

Article 49

DISTRESS CALLS AND MESSAGES

306. Radio stations shall be obliged to accept, with absolute priority, distress calls and messages regardless of their origin, to reply in the same manner to such messages, and immediately to take such action in regard thereto as may be required.

Article 50

FALSE OR DECEPTIVE DISTRESS, URGENCY, SAFETY OR IDENTIFICATION SIGNALS

307. Members and Associate Members agree to take the steps required to prevent the transmission or circulation of false or deceptive distress, urgency, safety or identification signals, and to collaborate in locating and identifying stations transmitting such signals from their own country.

Article 51

INSTALLATIONS FOR NATIONAL DEFENCE SERVICES

308. 1. Members and Associate Members retain their entire freedom with regard to military radio installations of their army, naval and air forces.

309. 2. Nevertheless, these installations must, so far as possible, observe statutory provisions relative to giving assistance in case of distress and to the measures to be taken to prevent harmful interference, and the provisions of the Regulations concerning the types of emission and the frequencies to be used, according to the nature of the service performed by such installations.

310. 3. Moreover, when these installations take part in the service of public correspondence or other services governed by the Regulations annexed to this Convention, they must, in general, comply with the regulatory provisions for the conduct of such services.

...

CHAPTER VII

FINAL PROVISIONS

Article 53

EFFECTIVE DATE OF THE CONVENTION

313. The present Convention shall enter into force on January first nineteen hundred and sixty-seven between countries, territories or groups of territories, in respect of which instruments of ratification or accession have been deposited before that date.

...

RECOMMENDATION

Unrestricted Transmission of News[2]

The Plenipotentiary Conference of the International Telecommunication Union (Montreux, 1965).

in view of

(*a*) the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948;

(*b*) Articles 30, 31 and 32 of the International Telecommunication Convention (Geneva, 1959);

conscious of

the noble principle that news should be freely transmitted;

recommends

that Members and Associate Members facilitate the unrestricted transmission of news by telecommunication services.

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[2] Adopted on 12 November 1965 and published by the Secretariat General of the International Telecommunication Union, Geneva, in *International Telecommunication Convention* (Montreux, 1965).

ORGANIZATION OF AMERICAN STATES

STATEMENT ON RACIAL INTEGRATION IN AMERICA

Adopted as Resolution XXIII of the Second Special Inter-American Conference [1]

Whereas:

Distinctions based on racial differences are contrary to the legal principles of human equality;

The entire system for the protection of individuals, of social groups, and of states arises from the preservation of this principle;

The unqualified and nondiscriminating protection of the individual is indispensable if democratic institutions themselves are to survive; and

The foregoing principles have been proclaimed in Article 5.j of the Charter of the Organization of American States and in the American Declaration of the Rights and Duties of Man, [2]

The Second Special Inter-American Conference

Declares:

1. That racial discrimination is deeply contrary to the sense of justice of the peoples of the Americas.

2. That it reiterates that the democratic concept of the state, a basic principle on which the conduct of the nations of the hemisphere is based, must guarantee to all individuals, without regard to race, decent living conditions, access to culture and employment, and opportunities for the pursuit of their legitimate activities.

3. That it reaffirms the goal of all the governments to develop a policy tending toward complete integration of all elements of their citizenry, without distinction of any nature based on racial origin.

[1] Text in Final Act of the Second Special Inter-American Conference, Rio de Janeiro, 17-30 November 1965, furnished by the Pan-American Union, Washington, D.C.

[2] For extracts from the Charter of the Organization of American States and the text of the American Declaration of the Rights and Duties of Man, see *Yearbook on Human Rights for 1948*, pp. 437-438 and pp. 440-442 respectively.

INTERNATIONAL HUMAN RIGHTS YEAR

Adopted as Resolution XXIII of the Second Special Inter-American Conference [1]

Whereas:

The United Nations designated 1968 as International Human Rights Year;

For that purpose the aforesaid organization is preparing a program of activities that will help to ensure the application of those rights;

The American states have made a significant contribution toward the achievement of that important victory of international law, including that contained in Resolution XL, "International Protection of the Essential Rights of Man", adopted by the Inter-American Conference on Problems of War and Peace (Chapultepec, 1945);

The Chapultepec resolutions and the position of the delegates of the American states shortly afterward at the San Francisco Conference, exerted decisive influence in placing in the Charter of the United Nations, seven times in the preamble and main text, a mention of the principle of effective respect for human rights and fundamental freedoms;

The American Declaration of the Rights and Duties of Man [2] was approved in Bogotá a few months prior to the approval in Paris of the Universal Declaration on Human Rights, in 1948; and

In order to encourage the adoption by the American peoples of progressive measures in behalf of human rights, it would be advisable to include the teaching of that subject in the schools and universities of the hemisphere, at least on an optional basis, and to arrange for the dissemina-

[1] Text in Final Act of the Second Special Inter-American Conference, Rio de Janeiro, 17-30 November 1965, furnished by the Pan American Union, Washington, D.C.

[2] For the text of the American Declaration of the Rights and Duties of Man, see *Yearbook on Human Rights for 1948*, pp. 440-442.

tion of information regarding such rights among all strata of the population,

The Second Special Inter-American Conference

Resolves:

1. To proclaim the adherence of the Organization of American States to the celebration of International Human Rights Year, and to contribute by all means at its disposal to make it more effective and more successful.

2. To request the Inter-American Commission on Human Rights to prepare the program for implementing the provisions of the preceding paragraph, bearing in mind the contribution made by the American states in establishing the international protection of human rights and the advisability of promoting for the teaching and dissemination of these rights among the peoples of the Americas.

3. To recommend that the Secretary General take such measures as are needed to ensure the implementation of the program prepared on the basis of the preceding provisions including placement of the corresponding item in the budget.

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS[1]

I. UNITED NATIONS

1. *Convention on the Prevention and Punishment of the Crime of Genocide* (Paris, 1948; entered into force on 12 January 1951) (see *Yearbook on Human Rights for 1948,* pp. 484-486)

During 1965, Upper Volta became a party to the Convention, by instrument of accession deposited on 14 September.

2. *Convention relating to the Status of Refugees* (Geneva, 1951; entered into force on 22 April 1954) (see *Yearbook on Human Rights for 1951,* pp. 581-588)

During 1965, the Democratic Republic of the Congo and Guinea became parties to the Convention, by instruments of accession and notification of succession deposited on 19 July and 28 December respectively.

3. *Convention on the Political Rights of Women* (New York, 1952; entered into force on 7 July 1954) (see *Yearbook on Human Rights for 1952,* pp. 375-376)

During 1965, Ghana and Mongolia became parties to the Convention, by instruments of accession deposited on 28 December and 18 August respectively.

4. *Convention on the International Right of Correction* (New York, 1952; entered into force on 24 August 1962) (see *Yearbook on Human Rights for 1952,* pp. 373-375)

During 1965, no States became parties to the Convention.

5. *Slavery Convention of 1926 as amended by the Protocol of December 1953* (signed in New York; as amended entered into force on 7 July 1955) (see *Yearbook on Human Rights for 1953,* pp. 345-346)

During 1965, Malawi became a party to the Convention, by instrument of accession deposited on 2 August.

6. *Convention on the Status of Stateless Persons* (New York, 1954; entered into force on 6 June 1960) (see *Yearbook on Human Rights for 1954,* pp. 369-375)

During 1965, Sweden and Uganda became parties to the Convention, by instruments of ratification and accession deposited on 2 April and 15 April respectively.

7. *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (Geneva, 1956; entered into force on 30 April 1957) (see *Yearbook on Human Rights for 1956,* pp. 289-291)

During 1965, Iceland and Malawi became parties to the Convention, by instruments of accession deposited on 17 November and 2 August respectively.

8. *Convention on the Nationality of Married Women* (New York, 1957; entered into force on 11 August 1958) (see *Yearbook on Human Rights for 1957,* pp. 301-302)

During 1965, Uganda became a party to the Convention, by instrument of accession deposited on 15 April.

9. *Convention on the Reduction of Statelessness* (New York, 1961; not yet in force) (see *Yearbook on Human Rights for 1961,* pp. 427-430)

During 1965, no States became parties to the Convention.

10. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (New York, 1962; entered into force on 9 December 1964) (see *Yearbook on Human Rights for 1962,* pp. 389-390)

During 1965, the following States became parties to the Convention by the instruments and on

[1] Concerning the status of these agreements at the end of 1964, see *Yearbook on Human Rights for 1964,* pp. 342-345. The information contained in the present statement concerning International Labour Conventions and agreements adopted under the auspices of the Organization of American States and the Council of Europe was furnished by the International Labour Office, the Pan American Union and the Secretariat-General of the Council of Europe, respectively. The information concerning the Geneva Conventions of 12 August 1949 was taken from the *Annual Report 1965,* of the International Committee of the Red Cross. With the exception of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character and the Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (for which the Secretary-General of the United Nations acts as depositary), the information concerning agreements under the auspices of UNESCO was furnished by the Secretariat of UNESCO.

the dates indicated: Cuba (ratification, 20 August), Czechoslovakia (ratification, 5 March), Dahomey (accession, 19 October), the Netherlands (ratification, 2 July), the Philippines (ratification, 21 January) and Poland (ratification, 8 January).

11. *International Convention on the Elimination of All Forms of Racial Discrimination* (New York, 1965) (see above, p. 389)

During 1965, no States became parties to the Convention.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Social Policy (Non-Metropolitan Territories) Convention 1947* (Convention No. 82; entered into force on 19 June 1955) (see *Yearbook on Human Rights for 1948*, pp. 420-425)

During 1965, no States became parties to the Convention.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947* (Convention No. 84; entered into force on 1 July 1953) (see *Yearbook on Human Rights for 1948*, pp. 425-427)

During 1965, no States became parties to the Convention.

3. *Freedom of Association and Protection of the Right to Organise Convention, 1948* (Convention No. 87; entered into force on 4 July 1950) (see *Yearbook on Human Rights for 1948*, pp. 427-430)

During 1965, the following States became parties to the Convention, by instruments of ratification deposited on the dates indicated: Bolivia (4 January), Ghana (2 June), Japan (14 June) and Malta (4 January).[2]

4. *Right to Organise and Collective Bargaining Convention, 1949* (Convention No. 98; entered into force on 18 July 1951)

During 1965, Malawi,[2] Malta[2] and Singapore[2] became parties to the Convention, by instruments of ratification deposited on 22 March, 4 January and 25 October respectively.

The United Kingdom on 24 September 1965 registered a declaration of application to non-metropolitan territories, applicable without modification in respect of Fiji.

5. *Equal Remuneration Convention, 1951* (Convention No. 100; entered into force on 23 May 1953) (see *Yearbook on Human Rights for 1951*, pp. 469-470)

During 1965, Israel and Malawi became parties to the Convention, by instruments of ratification deposited on 8 June and 22 March respectively.

6. *Social Security (Minimum Standards) Convention, 1952* (Convention No. 102; entered into force on 27 April 1955) (see *Yearbook on Human Rights for 1952*, pp. 377-389)

During 1965, no States became parties to the Convention.

7. *Maternity Protection Convention (Revised), 1952* (Convention No. 103; entered into force on 7 September 1955) (see *Yearbook on Human Rights for 1952*, pp. 389-392)

During 1965, the following States became parties to the Convention, by instruments of ratification deposited on the dates and with the exceptions indicated: Brazil [18 June; except work covered by Article 7, paragraph 1 (*b*) and (*c*)] and Spain [17 August; except work covered by Article 7, paragraph 1 (*d*)].

8. *Abolition of Penal Sanctions Convention, 1955* (Convention No. 104; entered into force on 7 June 1958) (see *Yearbook on Human Rights for 1955*, pp. 435-437)

During 1965, Brazil and Malawi became parties to the Convention, by instruments of ratification deposited on 18 June and 22 March respectively.

9. *Abolition of Forced Labour Convention 1957* (Convention No. 105; entered into force on 17 January 1950) (see *Yearbook on Human Rights for 1957*, pp. 303-304)

During 1965, the following States became parties to the Convention, by instruments of ratification deposited on the dates indicated: Brazil (18 June), Malta (4 January),[2] Singapore (25 October)[2] and Zambia (22 February).

10. *Discrimination (Employment and Occupation) Convention* (Convention No. 111; entered into force on 15 June 1960) (see *Yearbook on Human Rights for 1958*, pp. 307-308)

During 1965, the following States became parties to the Convention, by instruments of ratification deposited on the dates indicated: Brazil (26 November), Cuba (26 August) and Malawi (22 March).

11. *Social Policy (Basic Aims and Standards) Convention* (Convention No. 117; entered into force on 23 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 391-394)

During 1965, no States became parties to the Convention.

12. *Equality of Treatment (Social Security) Convention* (Convention No. 118; entered into force on 25 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 394-397)

[2] Confirming the obligations under the Convention which had been accepted on its behalf by the State previously responsible for the conduct of its foreign relations.

During 1965, the ratifications of the following States were registered on the dates and in respect of the branches indicated: China [4 January, branches (*a*), (*c*), (*d*), (*e*), (*f*) and (*g*)]. Israel [9 June, branches (*c*), (*e*), (*f*), (*g*) and (*i*)], and Tunisia [20 September, branches (*a*), (*b*), (*c*), (*g*) and (*i*)].

13. *Employment Policy Convention, 1964* (Convention No. 122; not yet in force) (see *Yearbook on Human Rights for 1964,* pp. 329-330)

During 1965, New Zealand and Sweden became parties to the Convention, by instruments of ratification deposited on 15 July and 11 June respectively.

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character* (Beirut, 1948; entered into force on 12 August 1954) (see *Yearbook on Human Rights for 1948,* pp. 431-433)

During 1965, Trinidad and Tobago became a party to the Agreement, by instrument of accession deposited on 31 August.

2. *Agreement on the Importation of Educational, Scientific and Cultural Materials* (Lake Success, 1950; entered into force on 21 May 1952) (see *Yearbook on Human Rights for 1950,* pp. 411-415)

During 1965, the following States became parties to the Agreement, by instruments of acceptance deposited on the dates indicated: Malawi (17 August), Rwanda (1 December), Uganda (15 April) and Upper Volta (14 September).

3. *Universal Copyright Convention and Protocols thereto* (Geneva, 1952; entered into force on 16 September 1955) (*Yearbook on Human Rights for 1952,* pp. 398-403)

During 1965, Malawi and Zambia became parties to the Convention, by instruments of accession deposited on 26 July and 1 March respectively.

4. *Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol thereto* (The Hague, 1954; entered into force on 7 August 1956) (see *Yearbook on Human Rights for 1954,* pp. 308-309)

During 1965, Turkey became a party to the Convention and the Protocol thereto, by instrument of accession deposited on 15 December.

5. *Convention Concerning the International Exchange of Publications* (Paris, 1958; entered into force on 23 November 1961) (see *Yearbook on Human Rights for 1960,* p. 434)

During 1965, Romania became a party to the Convention, by instrument of ratification deposited on 9 June.

6. *Convention concerning the Exchange of Official Publications and Government Documents between States* (Paris, 1958; entered into force on 30 May 1961) (see *Yearbook on Human Rights for 1960,* p. 434)

During 1965, Romania became a party to the Convention, by instrument of ratification deposited on 9 June.

7. *Convention against Discrimination in Education* (Paris, 1960; entered into force on 22 May 1962) (see *Yearbook on Human Rights for 1961,* pp. 437-439)

During 1965, China became a party to the Convention, by instrument of ratification deposited on 12 February.

IV. ORGANIZATION OF AMERICAN STATES

1. *Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works* (Washington, D.C., 1946; entered into force on 14 April 1947) (see *Pan American Union:* Law and Treaty Series, No. 19)

During 1965, no States became parties to the Convention.

2. *Inter-American Convention on the Granting of Political Rights to Women* (Bogotá, 1948; entered into force on 22 April 1949) (see *Yearbook on Human Rights for 1948,* pp. 438-439)

During 1965, no States became parties to the Convention.

3. *Inter-American Convention on the Granting of Civil Rights to Women* (Bogotá, 1948; entered into force on 22 April 1949) (see *Yearbook on Human Rights for 1948,* pp. 439-440)

During 1965, no States became parties to the Convention.

4. *Convention on Diplomatic Asylum* (Caracas, 1954; entered into force on 29 December 1954) (see *Yearbook on Human Rights for 1955,* pp. 330-332)

During 1965, no States became parties to the Convention.

5. *Convention on Territorial Asylum* (Caracas, 1954; entered into force on 29 December 1954) (see *Yearbook on Human Rights for 1955,* pp. 329-330)

During 1965, no States became parties to the Convention.

V. COUNCIL OF EUROPE

1. *Convention for the Protection of Human Rights and Fundamental Freedoms* (Rome, 1950; entered into force on 3 September 1953) (see *Yearbook on Human Rights for 1950,* pp. 418-426)

A declaration recognizing the compulsory jurisdiction of the Court was registered by Belgium on 1 December 1965, for two years from 29 June 1965.

2. *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* (Paris, 1952; entered into force on 18 May 1954) (see *Yearbook on Human Rights for 1952,* pp. 411-412)

No ratifications were deposited in 1965.

3. *European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors and Protocol thereto* (Paris, 1953; Agreement entered into force on 1 July 1954 and Protocol on 1 October 1954) (see *Yearbook on Human Rights for 1953,* pp. 355-357)

No ratifications were deposited in 1965.

4. *European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors and Protocol thereto* (Paris, 1953; Agreement entered into force on 1 July 1954 and Protocol on 1 October 1954) (see *Yearbook on Human Rights for 1953,* pp. 357-358)

No ratifications were deposited in 1965.

5. *European Convention on Social and Medical Assistance and Protocol thereto* (Paris, 1953; Agreement and Protocol entered into force on 1 July 1954) (see *Yearbook on Human Rights for 1953,* pp. 359-361)

No ratifications were deposited in 1965.

6. *European Convention on Establishment* (Paris, 1955; entered into force on 23 February 1965) (see *Yearbook on Human Rights for 1956,* pp. 292-297)

The Federal Republic of Germany and Greece ratified the Convention on 2 February 1965 and 2 March 1965 respectively.

7. *European Social Charter* (Turin, 1961; entered into force on 26 February 1965) (see *Yearbook on Human Rights for 1961,* pp. 442-450)

During 1965, the following States ratified the Charter on the dates indicated: Denmark (3 March), the Federal Republic of Germany (27 January) and Italy (22 October).

8. *Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms Conferring upon the European Court of Human Rights Competence to give Advisory Opinions* (Strasbourg, 1963; not yet in force) (see *Yearbook on Human Rights for 1963,* p. 424)

Luxembourg ratified the Protocol on 27 October 1965.

9. *Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms Amending Articles 29, 30 and 34 of the Convention* (Strasbourg, 1963; not yet in force) (see *Yearbook on Human Rights for 1963,* p. 425)

Luxembourg ratified the Protocol on 27 October 1965.

10. *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms other than those already included in the Convention and in the First Protocol thereto* (Strasbourg, 1963; not yet in force) (see *Yearbook on Human Rights for 1963,* pp. 425-426)

No ratifications were deposited in 1965.

11. *European Code of Social Security* (Strasbourg, 1964; not yet in force) (see *Yearbook on Human Rights for 1964,* pp. 331-334)

Norway ratified the Code on 25 November 1965.

12. *Protocol to the European Code of Social Security* (Strasbourg, 1964; not yet in force) (see *Yearbook on Human Rights for 1964,* p. 335)

Norway ratified the Protocol on 25 November 1965.

VI. OTHER INSTRUMENTS

1. *Geneva Conventions of 12 August 1949* (entered into force on 21 October 1950) (see *Yearbook on Human Rights for 1949*, pp. 299-309)

During 1965, the following States became parties to the Conventions by the instruments and on the dates indicated: Canada (ratification, 14 May), Gabon (declaration of continuity, 26 February), Iceland (accession, 10 August), Mali (accession, 24 February) and Sierra Leone (declaration of continuity, 10 June).

By 31 December 1965, these Conventions were binding on 108 States. The International Committee of the Red Cross was of the opinion that even without a declaration of continuity, the following ten States, namely Burundi, the Central African Republic, Chad, the Republic of the Congo, Gambia, Guinea, Kenya, Malawi, Malta and Zambia, were implicitly bound by the participation of the States to which they succeeded. The total number of States bound by the Geneva Conventions might therefore be considered to be 118.

2. *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (Rome, 1961; entered into force on 18 May 1964) (see *Yearbook on Human Rights for 1961*, pp. 452-454)

During 1965, Brazil became a party to the Convention by instrument of ratification deposited on 29 June and Denmark by instrument of ratification, with declaration deposited on 23 June.

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